"बिजनेस पोस्ट के अन्तर्गत डाक शुल्क के नगद भुगतान (बिना डाक टिकट) के प्रेषण हेतु अनुमत. क्रमांक जी. 2-22-छत्तीसगढ़ गजट/38 सि. से. भिलाई, दिनांक 30-5-2001."

पंजीयन क्रमांक
"छत्तीसगढ़/दुर्ग/09/2013-2015."

छत्तीसगढ़ राजपत्र

प्राधिकार से प्रकाशित

क्रमांक 7] रायपुर, शुक्रवार, दिनांक 16 फरवरी 2018—माघ 27, शक 1939

विषय—सूची

भाग १

राज्य शासन के आदेश

सामान्य प्रशासन विभाग
मंत्रालय, महानदी भवन, नया रायपुर

नया रायपुर, दिनांक 24 जनवरी 2018

क्रमांक एफ 4-1/2007/1-7.—विधि एवं विधायी कार्य विभाग के आदेश क्रमांक 798/291/XXI-B/C.G./2018, दिनांक 24-01-2018 के अनुक्रम में राज्य शासन द्वारा श्री अशोक कुमार लुनिया, (सदस्य उच्चतर न्यायिक सेवा) विधिक सलाहकार, छत्तीसगढ़ लोक आयोग की सेवाएं छत्तीसगढ़ लोक आयोग, रायपुर से वापस लेते हुए, माननीय छत्तीसगढ़ उच्च न्यायालय, बिलासपुर को वापस लौटाई जाती है.

छत्तीसगढ़ के राज्यपाल के नाम से तथा आदेशानुसार,
एल. डी. चोपड़े, अवर सचिव.

संचालक, मुद्रण तथा लेखन सामग्री, छत्तीसगढ़ द्वारा शासकीय क्षेत्रीय मुद्रणालय, राजनांदगांव से मुद्रित तथा प्रकाशित—2018.

आवास एवं पर्यावरण विभाग

मंत्रालय, महानदी भवन, नया रायपुर

नया रायपुर, दिनांक 31 अक्टूबर 2017

क्रमांक 4086/3321/2017/32.—छत्तीसगढ़ नगर तथा ग्राम निवेश अधिनियम, 1973 (क्रमांक 23 सन् 1973) की धारा 13 की उपधारा (2) के खण्ड (क) द्वारा प्रदत्त शक्तियों को प्रयोग में लाते हुए, राज्य शासन एतद्द्वारा इस विभाग की अधिसूचना क्रमांक 24/1343/आ.पर्या./2002 दिनांक 05 मार्च, 2002 द्वारा गठित सारंगढ़ निवेश क्षेत्र जिला रायगढ़ अनुसूची-दो में निम्नानुसार पुर्नगठित सीमाएं निर्धारित की जाती है :—

अनुसूची-दो

सारंगढ़ निवेश क्षेत्र की पुर्नगठित सीमाएं

उत्तर में : ग्राम खम्हारडीह, पचपेढ़ी, उधरी, कोतरी एवं ग्राम बसिनबेहरा की उत्तरी सीमा तक.
पूर्व में : ग्राम बसिनबेहरा, साराडीह, झारपाली, उम्मेदपुर एवं ग्राम बीजेपुर की पूर्वी सीमा तक.
दक्षिण में : ग्राम बीजेपुर, बरदरहा, चंवरपुर, सारंगढ़, भेजनार, जुनाडीह एवं ग्राम चन्दाई की दक्षिणी सीमा तक.
पश्चिम में : ग्राम चन्दाई, दुर्गापाली, कुटेला एवं ग्राम खम्हारडीह की पश्चिमी सीमा तक.

छत्तीसगढ़ के राज्यपाल के नाम से तथा आदेशानुसार,
रेजीना टोप्पो, अपर सचिव.

राजस्व विभाग

कार्यालय, कलेक्टर, जिला बस्तर, जगदलपुर, छत्तीसगढ़ एवं पदेन उप-सचिव, छत्तीसगढ़ शासन, राजस्व एवं आपदा प्रबंधन विभाग

जगदलपुर, दिनांक 30 दिसम्बर 2017

क्रमांक क/भू-अर्जन/02/अ-82/2016-17.—भूमि अर्जन पुनर्वासन और पुनर्व्यवस्थापन में उचित प्रतिकर और पारदर्शिता का अधिकार अधिनियम, 2013 की धारा 19 (2) के तहत यह घोषित किया जाता है कि ग्राम "बड़े काकलुर", प.ह.नं.-06, तहसील-बास्तानार, जिला बस्तर की निजी भूमि अर्जन से प्रभावित, खातेदार/परिवार को निम्नानुसार पुनर्वास लाभ प्राप्त होगा :—

क्रमांक	पुनर्वासन और पुनर्व्यवस्थापन हकदारी के अवयव	क्या उपलब्ध कराया गया है, यदि उपलब्ध कराया गया है, तो ब्यौरा दें
(1)	(2)	(3)
01.	विस्थापन की दशा में मकान इकाइयों की व्यवस्था	लागू नहीं होता.
02.	भूमि के लिए भूमि	लागू नहीं होता.
03.	विकसित भूमि के लिए प्रस्थापना	लागू नहीं होता.
04.	वार्षिक या नियोजन का विकल्प	छत्तीसगढ़ शासन राजस्व एवं आपदा प्रबंधन विभाग के निर्देश क्रमांक एफ-7-4/सात-1/2015/दिनांक 29-08-2016 में निहित निर्देश/प्रावधान अनुसार भू-अर्जन अधिनियम 2013 की अनुसूची "दो" की कण्डिका-4 का लाभ पात्र प्रभावित खातेदार/परिवार को प्राप्त होगा.
05.	विस्थापित कुटुम्बों के लिए एक वर्ष की अवधि तक जीवन निर्वाह अनुदान.	लागू नहीं होता.

(1)	(2)	(3)
06.	विस्थापित कुटुम्बों के लिए परिवहन खर्च	लागू नहीं होता.
07.	पशु बाड़ा/छोटी दुकान खर्च	लागू नहीं होता.
08.	कारीगरों छोटे व्यापारियों और कतिपय अन्य को एक बार अनुदान.	लागू नहीं होता.
09.	मछली पकड़ने का अधिकार	लागू नहीं होता.
10.	एक बार पुनर्व्यवस्थापन भत्ता	लागू नहीं होता.
11.	स्टाम्प शुल्क और रजिस्ट्रीकरण फीस	लागू नहीं होता.

2. तद्अनुसार आज दिनांक 30/12/2017 को यह घोषणा पत्र जारी किया जाता है.

जगदलपुर, दिनांक 30 दिसम्बर 2017

क्रमांक क/भू-अर्जन/03/अ-82/2016-17.—भूमि अर्जन पुनर्वासन और पुनर्व्यवस्थापन में उचित प्रतिकर और पारदर्शिता का अधिकार अधिनियम, 2013 की धारा 19 (2) के तहत यह घोषित किया जाता है कि ग्राम साडरा बोदेनार, प.ह.नं.-09, तहसील-बास्तानार, जिला बस्तर की निजी भूमि अर्जन से प्रभावित, खातेदार/परिवार को निम्नानुसार पुनर्वास लाभ प्राप्त होगा :—

क्रमांक	पुनर्वासन और पुनर्व्यवस्थापन हकदारी के अवयव	क्या उपलब्ध कराया गया है, यदि उपलब्ध कराया गया है, तो ब्यौरा दें
(1)	(2)	(3)
01.	विस्थापन की दशा में मकान इकाइयों की व्यवस्था	लागू नहीं होता.
02.	भूमि के लिए भूमि	लागू नहीं होता.
03.	विकसित भूमि के लिए प्रस्थापना	लागू नहीं होता.
04.	वार्षिक या नियोजन का विकल्प	छत्तीसगढ़ शासन राजस्व एवं आपदा प्रबंधन विभाग के निर्देश क्रमांक एफ-7-4/सात-1/2015/दिनांक 29-08-2016 में निहित निर्देश/प्रावधान अनुसार भू-अर्जन अधिनियम 2013 की अनुसूची "दो" की कण्डिका-4 का लाभ पात्र प्रभावित खातेदार/परिवार को प्राप्त होगा.
05.	विस्थापित कुटुम्बों के लिए एक वर्ष की अवधि तक जीवन निर्वाह अनुदान.	लागू नहीं होता.
06.	विस्थापित कुटुम्बों के लिए परिवहन खर्च	लागू नहीं होता.
07.	पशु बाड़ा/छोटी दुकान खर्च	लागू नहीं होता.
08.	कारीगरों छोटे व्यापारियों और कतिपय अन्य को एक बार अनुदान.	लागू नहीं होता.
09.	मछली पकड़ने का अधिकार	लागू नहीं होता.
10.	एक बार पुनर्व्यवस्थापन भत्ता	लागू नहीं होता.
11.	स्टाम्प शुल्क और रजिस्ट्रीकरण फीस	लागू नहीं होता.

2. तद्अनुसार आज दिनांक 30/12/2017 को यह घोषणा पत्र जारी किया जाता है.

जगदलपुर, दिनांक 30 दिसम्बर 2017

क्रमांक क/भू-अर्जन/03/अ-82/2016-17.—भूमि अर्जन पुनर्वासन और पुनर्व्यवस्थापन में उचित प्रतिकर और पारदर्शिता का अधिकार अधिनियम, 2013 की धारा 19 (2) के तहत यह घोषित किया जाता है कि ग्राम "कावानार", प.ह.नं.-10, तहसील-बास्तानार, जिला बस्तर की निजी भूमि अर्जन से प्रभावित, खातेदार/परिवार को निम्नानुसार पुनर्वास लाभ प्राप्त होगा :—

क्रमांक	पुनर्वासन और पुनर्व्यवस्थापन हकदारी के अवयव	क्या उपलब्ध कराया गया है, यदि उपलब्ध कराया गया है, तो ब्यौरा दें
(1)	(2)	(3)
01.	विस्थापन की दशा में मकान इकाइयों की व्यवस्था	लागू नहीं होता.
02.	भूमि के लिए भूमि	लागू नहीं होता.
03.	विकसित भूमि के लिए प्रस्थापना	लागू नहीं होता.
04.	वार्षिक या नियोजन का विकल्प	छत्तीसगढ़ शासन राजस्व एवं आपदा प्रबंधन विभाग के निर्देश क्रमांक एफ-7-4/सात-1/2015/दिनांक 29-08-2016 में निहित निर्देश/प्रावधान अनुसार भू-अर्जन अधिनियम 2013 की अनुसूची "दो" की कण्डिका-4 का लाभ पात्र प्रभावित खातेदार/परिवार को प्राप्त होगा.
05.	विस्थापित कुटुम्बों के लिए एक वर्ष की अवधि तक जीवन निर्वाह अनुदान.	लागू नहीं होता.
06.	विस्थापित कुटुम्बों के लिए परिवहन खर्च	लागू नहीं होता.
07.	पशु बाड़ा/छोटी दुकान खर्च	लागू नहीं होता.
08.	कारीगरों छोटे व्यापारियों और कतिपय अन्य को एक बार अनुदान.	लागू नहीं होता.
09.	मछली पकड़ने का अधिकार	लागू नहीं होता.
10.	एक बार पुनर्व्यवस्थापन भत्ता	लागू नहीं होता.
11.	स्टाम्प शुल्क और रजिस्ट्रीकरण फीस	लागू नहीं होता.

2. तद्अनुसार आज दिनांक 30/12/2017 को यह घोषणा पत्र जारी किया जाता है.

जगदलपुर, दिनांक 30 दिसम्बर 2017

क्रमांक क/भू-अर्जन/04/अ-82/2016-17.—भूमि अर्जन पुनर्वासन और पुनर्व्यवस्थापन में उचित प्रतिकर और पारदर्शिता का अधिकार अधिनियम, 2013 की धारा 19 (2) के तहत यह घोषित किया जाता है कि ग्राम "बड़ेबोदेनार", प.ह.नं.-06, तहसील-बास्तानार, जिला बस्तर की निजी भूमि अर्जन से प्रभावित, खातेदार/परिवार को निम्नानुसार पुनर्वास लाभ प्राप्त होगा :—

क्रमांक	पुनर्वासन और पुनर्व्यवस्थापन हकदारी के अवयव	क्या उपलब्ध कराया गया है, यदि उपलब्ध कराया गया है, तो ब्यौरा दें
(1)	(2)	(3)
01.	विस्थापन की दशा में मकान इकाइयों की व्यवस्था	लागू नहीं होता.
02.	भूमि के लिए भूमि	लागू नहीं होता.
03.	विकसित भूमि के लिए प्रस्थापना	लागू नहीं होता.

(1)	(2)	(3)
04.	वार्षिक या नियोजन का विकल्प	छत्तीसगढ़ शासन राजस्व एवं आपदा प्रबंधन विभाग के निर्देश क्रमांक एफ–7–4/सात–1/2015/दिनांक 29–08–2016 में निहित निर्देश/प्रावधान अनुसार भू–अर्जन अधिनियम 2013 की अनुसूची "दो" की कण्डिका–4 का लाभ पात्र प्रभावित खातेदार/परिवार को प्राप्त होगा.
05.	विस्थापित कुटुम्बों के लिए एक वर्ष की अवधि तक जीवन निर्वाह अनुदान.	लागू नहीं होता.
06.	विस्थापित कुटुम्बों के लिए परिवहन खर्च	लागू नहीं होता.
07.	पशु बाड़ा/छोटी दुकान खर्च	लागू नहीं होता.
08.	कारीगरों छोटे व्यापारियों और कतिपय अन्य को एक बार अनुदान.	लागू नहीं होता.
09.	मछली पकड़ने का अधिकार	लागू नहीं होता.
10.	एक बार पुनर्व्यवस्थापन भत्ता	लागू नहीं होता.
11.	स्टाम्प शुल्क और रजिस्ट्रीकरण फीस	लागू नहीं होता.

2. तद्अनुसार आज दिनांक 30/12/2017 को यह घोषणा पत्र जारी किया जाता है.

छत्तीसगढ़ के राज्यपाल के नाम से तथा आदेशानुसार,
धनंजय देवांगन, कलेक्टर एवं पदेन उप–सचिव.

कार्यालय, कलेक्टर, जिला बिलासपुर, छत्तीसगढ़ एवं पदेन उप–सचिव, छत्तीसगढ़ शासन, राजस्व एवं आपदा प्रबंधन विभाग

बिलासपुर, दिनांक 12 जनवरी 2018

क्रमांक क/अ.वि.अ./भू–अ.लि./2017/2127.—चूंकि राज्य शासन को यह प्रतीत होता है कि इससे संलग्न अनुसूची के खाने (1) से (4) में वर्णित भूमि की अनुसूची के खाने (6) में उसके सामने दिये गये सार्वजनिक प्रयोजन के लिये आवश्यकता है अथवा आवश्यकता पड़ने की संभावना है. अत: भूमि अर्जन, पुनर्वासन और पुनर्व्यवस्थापन में उचित प्रतिकर और पारदर्शिता का अधिकार अधिनियम, 2013 (जिसे एतद् पश्चात् अधिनियम 2013 कहा जायेगा) की धारा 11 की उप–धारा (1) के उपबंधों के अनुसार सभी संबंधित व्यक्तियों को इसके द्वारा इस आशय की सूचना दी जाती है कि राज्य शासन एतद्द्वारा अनुसूची के खाने (5) में उल्लेखित प्राधिकारी को उक्त भूमि के संबंध में धारा 12 के अंतर्गत दी गयी शक्तियों का प्रयोग करने के लिए प्राधिकृत करता है :—

अनुसूची

भूमि का वर्णन				धारा 12 द्वारा प्राधिकृत अधिकारी	सार्वजनिक प्रयोजन का वर्णन
जिला	तहसील	नगर/ग्राम	लगभग क्षेत्रफल (हेक्टेयर में)		
(1)	(2)	(3)	(4)	(5)	(6)
बिलासपुर	पेण्ड्रारोड	पतरकोनी प.ह.नं. 25	4.141	मुख्य प्रशासनिक अधिकारी, (निर्माण), द.पू.म.रे. बिलासपुर.	बिलासपुर अनुपपुर रेल दोहरीकरण परियोजना में सारबहरा पेण्ड्रारोड के मध्य दिकपरिवर्तन हेतु.

भूमि का नक्शा (प्लान) का निरीक्षण अनुविभागीय अधिकारी (रा.), पेण्ड्रारोड के कार्यालय में किया जा सकता है.

बिलासपुर, दिनांक 12 जनवरी 2018

क्रमांक क/अ.वि.अ./भू-अ.लि./2017/6119.—चूंकि राज्य शासन को यह प्रतीत होता है कि इससे संलग्न अनुसूची के खाने (1) से (4) में वर्णित भूमि की अनुसूची के खाने (6) में उसके सामने दिये गये सार्वजनिक प्रयोजन के लिये आवश्यकता है अथवा आवश्यकता पड़ने की संभावना है. अत: भूमि अर्जन, पुनर्वासन और पुनर्व्यवस्थापन में उचित प्रतिकर और पारदर्शिता का अधिकार अधिनियम, 2013 (जिसे एतद् पश्चात् अधिनियम 2013 कहा जायेगा) की धारा 11 की उप-धारा (1) के उपबंधों के अनुसार सभी संबंधित व्यक्तियों को इसके द्वारा इस आशय की सूचना दी जाती है कि राज्य शासन एतद्द्वारा अनुसूची के खाने (5) में उल्लेखित प्राधिकारी को उक्त भूमि के संबंध में धारा 12 के अंतर्गत दी गयी शक्तियों का प्रयोग करने के लिए प्राधिकृत करता है :—

अनुसूची

भूमि का वर्णन				धारा 12 द्वारा प्राधिकृत अधिकारी	सार्वजनिक प्रयोजन का वर्णन
जिला	तहसील	नगर/ग्राम	लगभग क्षेत्रफल (हेक्टेयर में)		
(1)	(2)	(3)	(4)	(5)	(6)
बिलासपुर	पेण्ड्रारोड	मड़ना प.ह.नं. 25	9.109	मुख्य प्रशासनिक अधिकारी, (निर्माण), द.पू.म.रे. बिलासपुर.	बिलासपुर अनुपपुर रेल दोहरीकरण परियोजना में सारबहरा पेण्ड्रारोड के मध्य दिकपरिवर्तन हेतु.

भूमि का नक्शा (प्लान) का निरीक्षण अनुविभागीय अधिकारी (रा.), पेण्ड्रारोड के कार्यालय में किया जा सकता है.

बिलासपुर, दिनांक 3 फरवरी 2018

क्रमांक 36/अ-82/2017-18.—चूंकि राज्य शासन को यह प्रतीत होता है कि इससे संलग्न अनुसूची के खाने (1) से (4) में वर्णित भूमि की अनुसूची के खाने (6) में उसके सामने दिये गये सार्वजनिक प्रयोजन के लिये आवश्यकता है अथवा आवश्यकता पड़ने की संभावना है. अत: भूमि अर्जन, पुनर्वासन और पुनर्व्यवस्थापन में उचित प्रतिकर और पारदर्शिता का अधिकार अधिनियम, 2013 (संख्या 30 सन् 2013) की धारा 11 की उप-धारा (1) के उपबंधों के अनुसार सभी संबंधित व्यक्तियों को इसके द्वारा इस आशय की सूचना दी जाती है कि राज्य शासन एतद्द्वारा अनुसूची के खाने (5) में उल्लेखित प्राधिकारी को उक्त भूमि के संबंध में धारा 12 के अंतर्गत दी गयी शक्तियों का प्रयोग करने के लिए प्राधिकृत करता है :—

अनुसूची

भूमि का वर्णन				धारा 12 द्वारा प्राधिकृत अधिकारी	सार्वजनिक प्रयोजन का वर्णन
जिला	तहसील	नगर/ग्राम	लगभग क्षेत्रफल (एकड़ में)		
(1)	(2)	(3)	(4)	(5)	(6)
बिलासपुर	तखतपुर	लमेर प.ह.नं. 52	19.15	कार्यपालन अभियंता, जल संसाधन संभाग, कोटा.	अरपा भैंसाझार बैराज परियोजना अन्तर्गत माईनर नहर निर्माण.

भूमि का नक्शा (प्लान) का निरीक्षण अनुविभागीय अधिकारी (राजस्व), कोटा के कार्यालय में किया जा सकता है.

बिलासपुर, दिनांक 3 फरवरी 2018

क्रमांक 56/अ-82/2017-18.—चूंकि राज्य शासन को यह प्रतीत होता है कि इससे संलग्न अनुसूची के खाने (1) से (4) में वर्णित भूमि की अनुसूची के खाने (6) में उसके सामने दिये गये सार्वजनिक प्रयोजन के लिये आवश्यकता है अथवा आवश्यकता पड़ने की संभावना है. अत: भूमि अर्जन, पुनर्वासन और पुनर्व्यवस्थापन में उचित प्रतिकर और पारदर्शिता का अधिकार अधिनियम, 2013 (संख्या 30 सन् 2013) की धारा 11 की उप-धारा (1) के उपबंधों के अनुसार सभी संबंधित व्यक्तियों को इसके द्वारा इस आशय की सूचना दी जाती है कि राज्य शासन एतद्द्वारा अनुसूची के खाने (5) में उल्लेखित प्राधिकारी को उक्त भूमि के संबंध में धारा 12 के अंतर्गत दी गयी शक्तियों का प्रयोग करने के लिए प्राधिकृत करता है :—

अनुसूची

भूमि का वर्णन				धारा 12 द्वारा प्राधिकृत अधिकारी	सार्वजनिक प्रयोजन का वर्णन
जिला	तहसील	नगर/ग्राम	लगभग क्षेत्रफल (एकड़ में)		
(1)	(2)	(3)	(4)	(5)	(6)
बिलासपुर	तखतपुर	भरनी प.ह.नं. 49	15.40	कार्यपालन अभियंता, जल संसाधन संभाग, कोटा.	अरपा भैंसाझार बैराज परियोजना अन्तर्गत माईनर नहर निर्माण.

भूमि का नक्शा (प्लान) का निरीक्षण अनुविभागीय अधिकारी (राजस्व), कोटा के कार्यालय में किया जा सकता है.

बिलासपुर, दिनांक 3 फरवरी 2018

क्रमांक 57/अ-82/2017-18.—चूंकि राज्य शासन को यह प्रतीत होता है कि इससे संलग्न अनुसूची के खाने (1) से (4) में वर्णित भूमि की अनुसूची के खाने (6) में उसके सामने दिये गये सार्वजनिक प्रयोजन के लिये आवश्यकता है अथवा आवश्यकता पड़ने की संभावना है. अत: भूमि अर्जन, पुनर्वासन और पुनर्व्यवस्थापन में उचित प्रतिकर और पारदर्शिता का अधिकार अधिनियम, 2013 (संख्या 30 सन् 2013) की धारा 11 की उप-धारा (1) के उपबंधों के अनुसार सभी संबंधित व्यक्तियों को इसके द्वारा इस आशय की सूचना दी जाती है कि राज्य शासन एतद्द्वारा अनुसूची के खाने (5) में उल्लेखित प्राधिकारी को उक्त भूमि के संबंध में धारा 12 के अंतर्गत दी गयी शक्तियों का प्रयोग करने के लिए प्राधिकृत करता है :—

अनुसूची

भूमि का वर्णन				धारा 12 द्वारा प्राधिकृत अधिकारी	सार्वजनिक प्रयोजन का वर्णन
जिला	तहसील	नगर/ग्राम	लगभग क्षेत्रफल (एकड़ में)		
(1)	(2)	(3)	(4)	(5)	(6)
बिलासपुर	तखतपुर	चिचिरदा प.ह.नं. 41	19.66	कार्यपालन अभियंता, जल संसाधन संभाग, कोटा.	अरपा भैंसाझार बैराज परियोजना अन्तर्गत माईनर नहर निर्माण.

भूमि का नक्शा (प्लान) का निरीक्षण अनुविभागीय अधिकारी (राजस्व), कोटा के कार्यालय में किया जा सकता है.

बिलासपुर, दिनांक 3 फरवरी 2018

क्रमांक 58/अ-82/2017-18.—चूंकि राज्य शासन को यह प्रतीत होता है कि इससे संलग्न अनुसूची के खाने (1) से (4) में वर्णित भूमि की अनुसूची के खाने (6) में उसके सामने दिये गये सार्वजनिक प्रयोजन के लिये आवश्यकता है अथवा आवश्यकता पड़ने की संभावना है. अत: भूमि अर्जन, पुनर्वासन और पुनर्व्यवस्थापन में उचित प्रतिकर और पारदर्शिता का अधिकार अधिनियम, 2013 (संख्या 30 सन् 2013) की धारा 11 की उप-धारा (1) के उपबंधों के अनुसार सभी संबंधित व्यक्तियों को इसके द्वारा इस आशय की सूचना दी जाती है कि राज्य शासन एतद्द्वारा अनुसूची के खाने (5) में उल्लेखित प्राधिकारी को उक्त भूमि के संबंध में धारा 12 के अंतर्गत दी गयी शक्तियों का प्रयोग करने के लिए प्राधिकृत करता है :—

अनुसूची

भूमि का वर्णन				धारा 12 द्वारा प्राधिकृत अधिकारी	सार्वजनिक प्रयोजन का वर्णन
जिला	तहसील	नगर/ग्राम	लगभग क्षेत्रफल (एकड़ में)		
(1)	(2)	(3)	(4)	(5)	(6)
बिलासपुर	तखतपुर	सकरी प.ह.नं. 45	3.42	कार्यपालन अभियंता, जल संसाधन संभाग, कोटा.	अरपा भैंसाझार बैराज परियोजना अन्तर्गत माईनर नहर निर्माण.

भूमि का नक्शा (प्लान) का निरीक्षण अनुविभागीय अधिकारी (राजस्व), कोटा के कार्यालय में किया जा सकता है.

बिलासपुर, दिनांक 3 फरवरी 2018

क्रमांक 59/अ-82/2017-18.—चूंकि राज्य शासन को यह प्रतीत होता है कि इससे संलग्न अनुसूची के खाने (1) से (4) में वर्णित भूमि की अनुसूची के खाने (6) में उसके सामने दिये गये सार्वजनिक प्रयोजन के लिये आवश्यकता है अथवा आवश्यकता पड़ने की संभावना है. अत: भूमि अर्जन, पुनर्वासन और पुनर्व्यवस्थापन में उचित प्रतिकर और पारदर्शिता का अधिकार अधिनियम, 2013 (संख्या 30 सन् 2013) की धारा 11 की उप-धारा (1) के उपबंधों के अनुसार सभी संबंधित व्यक्तियों को इसके द्वारा इस आशय की सूचना दी जाती है कि राज्य शासन एतद्द्वारा अनुसूची के खाने (5) में उल्लेखित प्राधिकारी को उक्त भूमि के संबंध में धारा 12 के अंतर्गत दी गयी शक्तियों का प्रयोग करने के लिए प्राधिकृत करता है :—

अनुसूची

भूमि का वर्णन				धारा 12 द्वारा प्राधिकृत अधिकारी	सार्वजनिक प्रयोजन का वर्णन
जिला	तहसील	नगर/ग्राम	लगभग क्षेत्रफल (एकड़ में)		
(1)	(2)	(3)	(4)	(5)	(6)
बिलासपुर	तखतपुर	परसदाबानी प.ह.नं. 47	14.85	कार्यपालन अभियंता, जल संसाधन संभाग, कोटा.	अरपा भैंसाझार बैराज परियोजना अन्तर्गत माईनर नहर निर्माण.

भूमि का नक्शा (प्लान) का निरीक्षण अनुविभागीय अधिकारी (राजस्व), कोटा के कार्यालय में किया जा सकता है.

छत्तीसगढ़ के राज्यपाल के नाम से तथा आदेशानुसार,
पी. दयानंद, कलेक्टर एवं पदेन उप-सचिव.

विभाग प्रमुखों के आदेश

कार्यालय मुख्य निर्वाचन पदाधिकारी, छत्तीसगढ़
शास्त्री चौक, पुराना मंत्रालय परिसर, रायपुर

रायपुर, दिनांक 9 अक्टूबर 2017

फा.क्र-18/03/निर्वाचन याचिका/2017/1559.—लोक प्रतिनिधित्व अधिनियम, 1951 (1951 का 43) की धारा 106 (ख) के अनुसरण में, भारत निर्वाचन आयोग द्वारा निर्वाचन अर्जी संख्या-02/2014 में दिए गए उच्च न्यायालय, छत्तीसगढ़ बिलासपुर के आदेश दिनांक 21 जुलाई, 2017 को प्रकाशित करने वाली अधिसूचना को राज्य के शासकीय राजपत्र में सर्वसाधारण की जानकारी हेतु एतद्द्वारा प्रकाशित किया जाता है.

हस्ता./-

(सुब्रत साहू),
मुख्य निर्वाचन पदाधिकारी.

भारत निर्वाचन आयोग
निर्वाचन सदन, अशोक रोड, नई दिल्ली-110001

नई दिल्ली, तारीख 22 सितम्बर, 2017— भाद्रपद, 1939 (शक)

सं. 82/ES-1/EP/(2/2014)/CG-LA/2017.—लोक प्रतिनिधित्व अधिनियम, 1951 (1951 का 43) की धारा 106 (ख) के अनुसरण में, निर्वाचन आयोग एतद्द्वारा निर्वाचन अर्जी सं. 02/2014 में दिये गये उच्च न्यायालय, छत्तीसगढ़, बिलासपुर के तारीख 21 जुलाई, 2017 के आदेश को प्रकाशित करता है.

HIGH COURT OF CHHATTISGARH, BILASPUR

E.P. No. 2 of 2014

PETITIONER : 1. Smt. Kiranmayee Nayak W/o Vinod Nayak Aged About 46 Years presently The Mayor, Raipur (C.G.), R/o Nayak Advocate Chamber, Tatyapara, Raipur, P. S. Maudhapara, Tah And Distt. Raipur C. G.

VERSUS

RESPONDENT : 1. Brijmohan Agrawal S/o R. L. Agrawal Aged About 56 Years presently Agriculture Minister, Govt. of Chhattisgarh. R/o Ramsagar Para, P S Maudhapara, Tah And Distt. Raipur C.G.

For the Petitioner : Mr. Kapil Sibbal Sr. Advocate with Mr. S. C. Verma, Adovacate

For the Respondent : Mr. S. S. Shukla, Mr. B. P. Sharma, Mr. Raj Kumar Shukla, Mr. M. L. Sakat and Mr. Hari Agrawal Advocates.

Hon'ble Shri Justice Goutam Bhaduri

C. A. V. JUDGMENT

Reserved on 17.05.2017

Delivered on 21.07.2017

1. The instant election petition concerns with the election held for the Constituency No. 51 of Raipur South City in the year 2013. By such election, respondent No. 1 was declared elected as returned candidate. The said election is under challenge in this petition filed by petitioner Smt. Kiranmayee Nayak who was the contesting Candidate on behalf of the Indian National Congress. The main relief sought and the prayer made in this petition is that the election of respondent be declared as null and void on the ground that the election was won by applying and adopting corrupt practice by the respondent. The further prayer is also made to debar the respondent from contesting election for a period of six years and to take appropriate criminal action against the respondent.

2. Admittedly, the petitioner and respondent contested the election for constituency No. 51 i. e. South Raipur city Legislative Assembly of Chhattisgarh. The schedule of election which is not in dispute was as under.

Date of notification of election	-	04-10-2013
Date of filling of nomination	-	From 25-10-2013 to 01-11-2013
Date of withdrawal of nominations	-	03-11-2013
Scrutiny of nomination papers and allotment of Symbal	-	04-11-2013
Date of polling	-	19-11-2013
Date of counting of the votes and declaration of the result.	-	08-12-2013

3. (i) The Petitioner has preferred the petition u/s 80, 80 A, 100, 10 A & 77 of the Representation of the People Act, 1951 (hereinafter referred to as the " Act of 1951") challenging the validity of election of respondent on the ground of corrupt practice as he incurred expenses in excess of permissible limit of Rs. 16 lakhs which was prevailing at the relevant point of time. As has been pleaded and contended by learned counsel for the petitioner that u/s 123 (6) of the Act of 1951 it would amount to corrupt practice if the candidate incurs unauthorized expenditure in contravention of section 77 of the Act. It is pleaded and contended by the petitioner that the respondent has submitted. Form 14 showing much less expenditure incurred at election whereas it is Pleaded at para 3 of the petition that only Rs. 4,30,390/- was incurred as expenses but actually the assessment of expenses made by the Election Commission was much more it is stated at para 4 of the petition that the expenses worked out by election commission was Rs. 17,46,576,75. The counsel would submit that section 77 of the Act of 1951 requires every candidate to keep a separate and correct account of entire expenditure in connection with the election incurred or authorized by him or by his election agent for the period between the date on which he has been nominated and the date of election of result thereof it is stated that respondent had incurred expenditure beyond the limit of Rs. 16 lakhs as prescribed by the election commission, therefore, it would amount to corrupt practice Consequently the election has to be set aside.

(ii) it was further pleaded and contended during course of arguments that respondent got published two different sets of inland letters for every voter of the constituency and as against 2,05,759, voters, the expenses would have been much more on this head. It was stated that the inland letters were received by large number of voters and upon complaint made by the petitioner, election commission had seized 1,21,596 inland letters whereas the respondent has shown only 5000 inland letters of two different types which were published. It is stated that the total number of inland letters comes to 4,11,518 and considering the cost of one inland letter at the rate of Rs. 5/-, the actual cost comes to Rs. 20,57,590/- with respect to letters it is further pleaded that in response to the petitioners correspondence, the Postal Department, Raipur had stated that respondent had deposited and amount of Rs 8 lakhs towards expenditures of inland letters and franking was done over the same but the respondent has shown the expenditure of only Rs. 5000/- in Form No. 14 Further it has been pleaded and contended that respondent has given a toll free number in inland letters published by him and submitted the expenditure for the same as Rs. 15,843/- whereas the expenditure for obtaining toll free numbers costs Rs. 2 lakhs and further every call would be charged @ 35 to 40 paise per voter. Therefore, the total expenses would come to Rs. 7/- lakhs on this count.

(iii) Further it is contended that two actors of TV serial "Devon Ka Dev Mahadev" were invited by the respondent who had requested the voters of Raipur to caste their vote in favour of respondent and the petitioner had also attended such function in the capacity of Mayor of the city. Therefore, the entire expenses of Rs. 27 lakhs should have been included but the same was not shown in Form-14 by the respondent.

(iv) It was further contended that distribution of Batan, Kada, Metal Chain, Metal Batch, small button, wrist chain has been admitted by the respondent but the expenditure thereof was not shown in Form-14 and despite the fact that the goods are not permitted for the purpose of election campaign, the same was done and thereby corrupt practice was admitted.

(v) It was further submitted that the corrupt practice adopted by respondent for running the LED picture on a Tata Magic Vehicle was shown to be Rs. 5600/- whereas the same was Rs. 60,000/- per day as provided by the concerned agency. It was also conteneded that the respondent has distributed a book namely. "Chhattisgarh Ka Gaurav Va Chhattisgarh ke Atmasamman ka Prateek" with his photograph and work done by him as minister. The expenditure for publishing 5000 such books was shown as Rs. 24,150/- @ Rs. 4.60/- per book whereas. If the total number of voters i. e. 2,05,759 are considered and the rate is taken @ Rs. 25/- per book the expenditure would come to Rs. 05,14,975/-

(vi) It was also stated that the respondent has also used three dummy voting machines in every polling booth and for 239 polling booths, the total expenses would be Rs. 1,97,175/- taking into cost of Rs. 275/- per one dummy polling machine whereas the respondent has shown the expenditure of only Rs. 2,001/- for the use of 40 dummy polling machines. It is further alleged that the respondent and his agents have plied large number of vehicles in the constituency but the details of the same have not been submitted as required by the Act.

4. Learned counsel for the petitioner submitted that according to the statement of Singla, the economic observer, he did not approve the final expenditure, therefore, the expenditure which was settled was without his consent and the account could not have been accepted and consequently, the petitioner has discharged the burden of proof and regarding corrupt practice of every expenditure. He referred to a decision of Supreme Court in (1996) 3 SCC 624-R Puthunainar Alhithan and others Vs P. H. Pandian and others and would submit that it is difficult to establish the meticulous evidence of expenditure incurred by a candidate as it is in the exclusive knowledge and custody of returned candidate or other person. Referring to the deposition of P. W. 1. it is contended that no cross examination with respect to the expenses shows in the affidavit has been made therefore. it would amount to acceptance and referring to further statements of Mr. Sangeet Singla (P. W. 9) and Nidhi Chhibber (P. W. 11) it is stated that the documents which were showing the expenses of the respondent though were called but the officers deliberately avoided to bring the documents. Consequently the adverse inference has to be drawn.

5. It is stated that the petitioner, therefore, had discharged the burden of proof that the respondents had incurred expenses beyond the prescribed limit by summoning expenditure registers required to be manitained with the Elcection Commission, as per the compendium of instructions on Election Expenditure Monitoring. It is stated that though the summons were issued from time to time to bring the original Annexure 11 and Annexure 14 which were also accepted as Ex D-1 (C) and though the summons were served on P. W. 11 Nidhi Chibber, the Chief Election Officer, Chhattisgarh ; P. W. 12 Mahadev Kavre, the Nodel Officer of expenditure P.w. 7 sanjay Agrawal the returning officer who despite summons having been served the originals of documents were not produced it is further contended that the documents so summoned were required to be maintained as per the Act and Rules and Guidelines formulated by the Election commission and they have force of law under article 324 of Constitution of India, therefore, the discovery of documents should have been ensured so that the originals could be brought on record.

6. It is stated that had the documents been produced it could have been accepted that the respondent has incurred the expenditure beyond the limit is further submitted that the documents could not have been in the possession of the Election Commission and no mode of obtaining certified copy is provided to prove the case. It is further submitted that the petitioner though sought copies of Annexure P-11 and Annexure P-14 [Ex. P-1 (c)] by payment of challan, the same was obtained and it was produced in the Court. Therefore, it would have been deemed to be proved which shows the expenses incurred by the respondent, it is stated that Annexure P-11 was the basis on which 3 notices were issued by the Returning Officer to the respondent on 10-11-2013, 16-11-2013 and 20-11-2013 and as per the statement of P. W. 7, the notices were required because the expenses reflected in Annexure 11 was Rs. 17,46,576/- Consequently, the expenses which were shown in Annexure 11 has been proved that it was beyond the limit of expenditure it is further submitted that the

petitioner, therefore, had discharged her burden by bringing on record Annexure 11 on the basis of which the notices have been issued by the returning officer who admits the fact of issuance of notice to the respondent and such statement is also corroborated by P. W. 9 the expenditure observer who has stated that the expenditure incurred exceeded the prescribed limit at the time of election it is further submitted that the authenticity of the notice can be inferred from the fact that the notices for over-expenditure was given following the guidelines issued by the Election Commission, therefore, there would be an inference of official Act done unless proved otherwise.

7. Referring to (2003) 8 SCC 673-Sushil Kumar V. Rakesh kumar it was submitted that initial burden to prove the allegations in the election petition athough was upon the election petitioner but for proving the facts which were within the special knowledge of the respondent, the burden was upon him in terms of section 106 of the Evidence Act and the expenditure incurred by the respondent in respect of each item was within his knowledge and having not been disclosed by the respondent, the same has to be inferred from the statements of P. W. 7 and P. W. 9.

8. It is further stated that in the light of section 106 of the Evidence Act, the petitioner had exhausted all the remedies available to him by summoning the documents in order to prove the corrupt charges but the witness having not produced the same it automatically allowed the petitioner to lead secondary evidence u/s 63 of the Evidence Act Therefore, the secondary evidence which is the Annexures filed with the petition would be admissible by virtue of section 65 of the Evidence Act which shows the limit of expenditure was exceeded by the respondent.

9. It is further contended that as per the statement of p. w. 9., the disagreement was shown by Mr. Sangeet Singla as the true expenditure was not shown. in order to refure such presumption the respondent could have produced the final return which was filed before the election commission but having not been done so, the inference would be against the respondent. It is also stated that the respondent did not discharge his burden to show that how the expenditure incurred for the items was well within the limit and failed to produce any document in this regard. Therefore, the adverse inference has to be drawn against the respondent considering the testimony of P. W. 7. It is further submitted that Ex. D-2 would be inadmissible in eividence as the authors of document have not been called and reference was made to a case law reported in AIR 1954 Bombay 305 Madholal Sidhu Vs. Asian Assurance Co. Ltd. Consequently, it is submitted that the expenses incurred by the petitioner was beyond limit prescribed, as such, the corrupt practice was adopted and the election petition may be accordingly allowed.

10. Per contra, learned counsel for the respondent would submit that at the time of filing the petition, the petitioner was not present which would be evident from the order sheet dated 17-01-2014 as it was produced through the Advocate only. It is stated that the secunty deposit was made a day prior to 17-01-2014, therefore the petitioner was not a party to the entire filing and it was done through his advocate Shri S. C. Verma Advocate, in a result, as per the law laid down in G. V. Sreerama Reddy Vs. Returing officer reproted in (2009) 8 SCC 736, the election petition is liable to be dismissed on this count only that the election petition was not filed by the petitioner herself it is further stated that the petitioner has claimed that she be declared as returned candidate in place of respondent therefore, the petitioner is required to implead all the contesting candidates as parties to the present election petition as per requirement of section 82 of the Act, 1951. it is stated that the said objection having been raised by filing an application under order 7 Rule 11, one of the relief(s) was withdrawn but the same cannot be considered for the reason that the election can only be tested at the time of its presentation and if the election petition is filed with a defect, the same cannot be corrected subsequently by amendment application.

11. It is further contended that while dismissing the application under Order 7 Rule 11 CPC, this Court by and order dated 26-10-2015 observed that the rejection of application shall not have any adverse affect on the decision of various issues which is already framed by this Court, therefore at the time of final adjudication of the petition the same can be reexamined again Referring to section 10 (a) of Act of 1951, it is stated that the petition with regard to election expenditure can only be filed before the election commission of India and the said petition having not been filed before the election commission the present petition is not maintainable before the Court.

12. It is further submitted that section 79 (b) of the Act of 1951 defines the word “candidate” and the petitioner has not proved the fact that the expenses were made by the respondent/candidate it was further contended that the nomination was made on 29-10-2013 by the respondent and the election results were declared on 08-12-2013 therefore only the period in between the same can be considered whether the expenses of more

than 16 lakhs was incurred during such period and not beyond it is contended that such fact has not been proved by the petitioner that on what date, which expenses were incurred.

13. It was further submitted that it was the duty of election petitioner to establish such fact by way of pleading and the evidence that the expenditure of Rs. 17,46,576.75 was made uptill 28-11-2013 but the petitioner has failed to prove such facts and a Perusal of Anulagnak 11 would reveal that it has no evidentiary value as it do not contain any signature of the official issuing the same and is a private document which was produced by the petitioner. It is further submitted that though the submission made that Anulagnak 11 which is filed with the petition is admissible but the same was neither a certified copy nor was obtained by proper mode as such the inference of the Evidence Act cannot be drawn.

14. It is stated that there is huge divergence of pleading and proof in this case Referring to the Statement of witness P. W. 7 Sanjay Agrawal, P. W. 9 Sangeeta Singla it is stated that witness may be summoned to file document as per Order 16 Rules 6 & 10 CPC and in this case no such procedure was followed and therefore, the case is pressed only on presumption. It is also submitted that for proving a document, a procedure has been laid down u/s 61 to 63 of the Evidence Act and the contents should have been proved by either primary evidence or secondary evidence. Therefore, the document having only been produced cannot be accepted on an inference by taking it to be an admitted document. It is submitted that the burden of proof of fact which is the knowledge of the petitioner should have been discharged and no inference should have been drawn for the same.it is submitted that no reliable evidence has been placed so as to prove the document. Consequently, the petition is without any evidence, in a result liable to be rejected and heavy costs be imposed.

15. On the basis of pleadings of parties this Court had farmed the following issues on 26-06-2015.

S. No.	Issues	Finldings
01	Whether the returned candidate had incurred expenses over and above the specified limit declared by the Election Commission of India and placed false statements of expenditure and thereby the election is bad in law ?	"Not Proved"
02	Whether the returned candidate has adopted corrupt practice by circulation of inland letters and concealed the expenses thereof for which the Election Commission has taken cognizance, as a consequence of which the election can be declared as void ?	"Not Proved"
03	Whether the returned candidate has offered and distributed various goods to the voters to procure votes in his favour and as such adopted corrupt practice ?	"Not Proved"
04	Whether the election petition is liable to be dismissed on the ground that the petitioner has amended his prayer after filling the petition for withdrawal of relief ?	Not required to be adjudicated in view of finding arrived at for issue Nos. 1 to 3.
05	Whether the petition is liable to be dismissed for not following the mandate of Section 83 of the Representation of Pepple Act, 1951 about the pleading	Not required to be adjudicated in view of finding arrived at for issue Nos. 1 to 3.

16. I have heard the respective parties and have also perused the evidence. The issue nos. 1 to 3 are interlinked to each other and touches upon on the question of expenses incurred by the returned candidate whether exceeded the prescribed limit fixed during election. Therefore, are being adjudicated jointly as involved factual aspect.

17. The primary attack of petitioner is that the Anulagnak 11 and Anulagnak 14 which shows the expenditure of respondent is admissible in evidence u/s 65 of the Evidence Act. Anulagnak-11 shows the expenses incurred over and above Rs. 16 lakhs before the date of result. The question arises, whether such documents though not exhibited in evidcence can be acted upon as secondary evidence. The Anulagnak 14 and Anulagnak 11 are filed as Annexure P-2 and Annexure P-3 with the petition respectively. It is stated that Anulagnak 14 and Anulagnak 11 attached with the petition were obtained by payment of the prescribed fee of challan and certified copies were obtained.

18. It was further stated that 3 notices deled 10-11-2013, 16-11-2013 & 20-11-2013 were sent to the respondent for over-expenditure by the returning officer which tallies with the expenses shown therein as such when Anulagnak 11 despite being summoned was not brought by the witness, if fortifies that the over expenditure should have been admitted and it would be admissible as secondary evidence as the same was maintained by the Election Commision under the statutory mandate in this context, when we refer to Anulagnak 14 and Anulagnak 11 which are filed as Annexure P-2 and Annexure P-3 with the petition, the same have not been exhibited in evidence. On the basis of certain entries made therein, it was stated that it should have been admitted as over expenditure talled with the notice. The petitioner who has claimed that to obtain the copies of the said Anulagnak 11 and 14 challan was deposited vide Ex. P-32 (C). The challan would show that Rs. 84/- was deposited by one Chandrahas Naik and not by the petitioner on 28th December, 2013. The purpose for deposit of challan shows that it was paid for copy of Expenditure register whereas the Anulagnak 14 and Anulagnak 11 are not copies of the expenditure register it refers to shadow register kept by Eclection Commission to compare the expenditure shown by the candidate. Therefore prima facie , it appears that challan for which the amount were deposited were other than those have been referred to as Anulagnak 14 and 11 with the petition if the documents were obtained as certified copies both the documents Anulagank 14 and anulangak 11 (Annexure P-3) would show that neither it has been certified by the authorized officer issuing the same not any seal is appended there too. The officer of the election commission P. W 11 Nidhi Chibber who is the Chief Election Officer P. W. 7 Sanjay Agrawal and P. W. 9 Sangeet Singla who have been examined on behalf of the petitioner have not endorsed the fact. The petitioner could have got those documents admitted by the witnesses Both the documents do not bear any signature of officer as to who had issued the same or any seal is shown to be appended as certified copy. Therefore, the presumption of certified copy cannot be drawn at the outset.

19. The statement of P. W.-11 Smt. Nidhi Chibber who was the Chief Election Officer at the relevant time would show that when she was confronted with the documents at para 3 she refused to accept the fact that those documents are one and the same as that of E x. P-1 (C), Prima facie on comparison, the documents also do not appear to be one and the same as it appears to be register maintenance of day to day account whereas Anulagnak 11 wherein the petitioner has heavily relied upon is with respect to the shadow register of the expenses so prepared. Nothing is on record to show that by whom it was prepared and when if was prepared in statement of Sangeet Singla (P. W. 9) who was the Expenditure Observer, he has not stated anything about Anulagnak 11 and Anulagnak 14 The document was not confronted to him so as to prove the existence of it.

20. At this juncture, section 76 of the Evdence Act which defines the certified copy of the public document would be relievant to refer. For the sake of brevity section 76 of the Evidence Act is reproduced herein-below.

"76. **Certified copies of public documents.—** Every public officer having the custody of a public document, which any person has a right to inspect, shall give that person on demand a copy of it on payment of the legal fees therefore together with a certificate written at the foot of such copy that it is a true copy of such document or part thereof, as the case may be, and such certificate shall be dated and subscribed by such officer with his name and his official title, and shall be sealed, whenever such officer is authorized by law to make use of a seal; and such copies so certified shall be called certified copies.

Explanation— Any officer who by the ordinary course of official duty is authorized to deliver such copies, shall be deemed to have the custody of such documents within the meaning of this section."

21. Further, section 77 of the Evidence Act is about the proof of document by production of certified copies. Section 77 reads as under :

" 77. **Proof of documents by peoduction of certified copies.—**Such certified copies may be produced in proof of the contents of the public documents or parts of the public documents of which they purport to be copies."

22. In continuation section 79 speaks about the presumption as to the genuineness of the certified copies. Therefore in order to draw a presumption u/s 79 of the Evidence Act a documents is necessary required to be a certified copy of the public document so as to satisfiy the section 76 of the Evidence Act Anulagnak 11 and Anulagank 14 would show that it is only a typed copy without any seal or signature and Ex. 32(C) is aslo not about payment of money to obtain copy thereof but was for something else i. e. to obtain copy of expenditure register. Therefore, the submission of petitioner that Anulagnak 11 and Anulagnak 14 should have been admitted in evidence as secondary evidence is copletely misconceived and cannot be accepted as the same do not fulfill the minimum requirement of section 76 & 77 of the Indian Evidence Act. 1872

23. It would also be relevant to note that while the witnesses P. W. 7, P. W. 9 & P. W. 11 were examined by the petitioner and if the documents were not brought by them, which were summoned by petitioner and were alleged to have supported the petitioner despite the fact known to the pertitioner that documents were missing at the time of evidence the petitoner proceeded further with recording of the evidence. The petitioner did not bother to follow the procedure laid down in Order 16 Rule 6 & 10 of CPC which covers the summoning and production of documents Order 16 Rule 6 CPC mandates summons to produce documents and Order 10 speaks about the procedure when the witnes fails to bring the documents without summons. The petitioner if was conscious of the fact that the documents Anulagnak 11 & 14 which were attached with the petition existed in the office of Election Commission during recording of evidence of the witnesses could have taken a breath to call for them instead opted to proceed with the examination of witnesses to continue wiht his evidence. Therefore, the petitioner cannot turn down and say and pass the burden on witnesses to raise its voice that the documents are automatically admitted in evidence.

24. When the documents are admitted in evidence, Order 13 Rule 4 sub rule (1) of CPC provides as under : 4 (1) Subject to the provisions of the next following sub-rule there shall be endorsement on every document which has been admitted in evidence in the suit the following particulars, namely : (a) the number and title of the suit, (b) the name of the person produced the documents (c) the date on which it was produced, and (d) a statement of its having been so admitted; and the endorsement shall be signed or intialled by the judge. Therefore it will point out that even mere admission of documents in evidence do not amount to its proof. Admission in evidence of a party's document may in specified cases exclude the right of opposite party to challenge its admissibility. The most prominent exampples are when secondary evidence of a document within the meaning of sections 63-65 of the Evidence Act is adduced without having foundation for its admissibility or where a document not properly stamped is admitted in evidence attracting applicability of section 36 of the Stamp Act. Therefore, it is settled proposition that even the admission of document in evidence is not to be confused with the proof of document.

25. When the Court is called upon to form a judicial opinion whether the document has been proved, disproved or not proved the Court would look not at the document alone or only at the statement of witnesses standing in the box it would take into consideration the probabilities of case as emerging from whole record. it could not have been an intendment of any law, rule or practice direction to expect the Court applying its judicial mind to the entire record of the case. The necessary inference therefore that absence of putting an endorsement for the purpose of identification no sooner a document is placed before a witness would cause serious confusion as one would be left simply guessing or wondering while was the document to which the witness was referring to which deposing. in the facts of this case not even endorsement over the Anulagnak 11 & 14 was made. On the contrary the witnesses of the petitioner have not supported the existence of such document. Therefore, the documents i. e., Anulagnak-11 and 14 not being certified copies of finds any supports of its existence from the witness of petitioner itself cannot be read in evidence for any purpose.

26. Further, evaluating the pleadings, documents and the evidence go to show that the challenge in this election petition is predominanlty on the ground that the returned candidate has incurred expenditure beyond the maximum prescribed limit thereby was invoived in the corrupt practice, Reading of the R. P. Act 1951 with reference to corrupt practice,section 123 (6) speaks of incurring or authorizing of expenditure in contravention of section 77. Section 123 (6) is reproduced hereinbelow :

Sec. 123 of the R. P. Act of 1951

123. **Corrupt practices :-** The following shall be deemed to be corrupt practices for the purposes of this Act.

(1) XXX
(2) XXX
(3) XXX
(4) XXX
(5) XXX
(6) The incurring or authorizing of expenditure in contravention of section 77

27. Since this section makes a reference to section 77 of the Act of 1951, necessarily section 123 (6) has to be read along with section 77 which reads as under ;

Sec, 77 of the R. P. Act 1951

"77. Account of election expenses and maximum thereof .- (1) Every candidate at an election shall, either by himself or by his election agent, keep a separate and correct account of all expenditure in connection with the election incurred or authorized by him or by his election agent between the date of on which he has been nominated and the date of declaration of the result thereof, both dates inclusive.

Explanation 1 .- For removal of doubts, it is hereby declared that-

(a) The expenditure incurred by leaders of a political party on account of travel by air or by any other means of transport for propagating programme of the political party shall not be deemed to be the expenditure in connection with the election incurred or authorized by a candidate of that political party or his election agent for the purposes of this sub-section ;

(b) Any expenditure incurred in respect of any arrangements made, facilities provided or any other act or thing done by any person in the service of the Government and belonging to any of the classes mentioned in clause (7) of Section 123 in the discharge or purported discharge of his official duty as mentioned in the proviso to that clause shall not be deemed to be expenditure in connection with the election incurred or authorized by a candidate or by his election agent for the purposes of this sub-section.

Explanation 2.- For the purpose of clause (a) of Explanation 1, the expression "leaders of a political party" in respect of any election means.

(i) Where such political party is a recognized political party, such persons not exceeding forty in number, and

(ii) Where such political party is other than a recognized political party, such persons not exceeding twenty in number,

Whose names have been communicated to the Election commission and the Chief Electoral Officers of the States by the political party to be leaders for the purposes of such election, within a period of seven days from the date of the notification for such election published in the Gazette of India or Official Gazette of the State, as the Case may be, under this Act :

Provided that a political party may, in the case where any of the persons referred to in clause (i) or, as the case may be, in clause (ii) dies or ceses to be a member of such political party, by further communication to the Election Commission and the Chief Electoral Officers of the States, substitute new name, during the period ending immediately before forty-eight hours ending with the hour fixed for the conclusion of the last poll for such election for the name of such person died or ceased to be a member, for the purposes of designating the new leader in his place.

(2) The account shall contain such particulars, as may be prescribed.

(3) The total of the said expenditure shall not exceed such amount as may be prescribed".

28. Section 100 (1) (b) lays down that the commission of corrupt practice as a ground for declaring the election void in this context, Section 100 (1) (b) (d) is reievant here and quoted below.

Section 100 of the R. P. Act. 1951

100. **Grounds for declalring election to be void-**(1) Subject to the provisions of such sub-section (2) if the High Court is of the opinion-

(a) XXX XXX XXX

(b) that any corrupt practice has been committed by a returned candidate or his election agent or by any other person with the consent of a returned candidate or his election agent ; or

(c) XXX XXX XXX

(d) that the result of the election, in so far as it concerns a returned candidate, has been materially affected -

(i) XXX XXX

(ii) by any corrupt practice committed in the interests of the returned candidate by an agent other than his election agent or

(iii) XXX XXX

(iv) by any non-cmpliance with the provisions of the Consitution of this Act or of any rules or orders made under this Act.

The High Court shall declare the election of the returned candidate to be void."

29. Reading of the aforesaid provisions would indicate that section 77 (1) of the Act 1951 makes it mandatory for every candidate at an election to the State Legislative Assembly or the House of People to keep a separate and correct account of all expenditure incurred or authorized by him or by election agent, between the date on which he was nominated and the date of declaration of result of election both dates inclusive. The total of the said expenditure shall not exceed such amount as may be prescribed u/s 77 (3). U/s 77 (2), the account shall contain such particulars as may be prescribed. Rule 90 of the Conduct of Election Rules 1961 prescribes the limit of election expenditure for parliamentary and assembly constituencies in each of the States and union territories. The particulars which have to be shown in the account are prescribed in Rule 86 of those Rules, failure to maintain the account is an electoral offence u/s 177 of the IPC. Reading of entire provisions of section 77 would lead to show that all expenditure incurred or authorised by the political parties friends and supporters of a candidate in connection with his election is to be considered as part of candidates expenditure except the expenditure on travelling of leaders of his political party.

30. Further coming back to the point of pleading, reading of section 83 would show that where an election petition alleges commission of corrupt practice by a candidate, the pleading must contain (a) direct and detailed nature of corrupt practice as defined in 1951 Act (b) the details of every important particular giving the time place, names of persons, use of words and expressions etc. it must also clearly appear from the allegations that the corrupt practice was indulged with either express or implied consent of the candidate or his election agent.

31. Now while examining the pleading along with evidence the law and principles which occupy the field would be necessary to be considered in a case law reported in (1999) 1 SCC 666- L. R. Shivarama Gowda vs. T. M. Chadrashekhar (para 10) Their Lordships of the Supreme Court have laid down the law that in order to declare and election to be void under section 100 (1) (d) iv), it is absolutely necessary for the election petioner to plead that the result of the election so far as if relates to returned candidate has been matenally affected by the alleged non-compliance with the provisions of the Act of the rules. Now reverting the election petition, it would go to show that the specific pleading is absent about the fact that the election result has been materially affected for non compliance of any rules or the provision. in the case in hand since the court is examining the allegation of election petition as against the will of the popple , therefore the necessary pleading to this effect has to be there in the election petition to hold that there is a violation of specific rules of direction issued by the Election Commission coupled with the fact that the result of the election of the returned candidate has been materially affected by the alleged non-compliance.

32. Further at para 18 of the case (supra), the supreme court while analyzing the application of section 77 further held that incurring or authorizing or expenditure in contravention of section 77 of the act is a corrupt practice and section 77 provides that every candidate of an election shall keep a separate and correct account of all expenditure in connection with the election incurred or authorized by him or by his election agent and that the accounts shall contain such particulars as may be prescribed Rule 86 of the Conduct of Election Rules, 1961 sets out the particulars to be contained in the account of election expenses. It has been further held that subsections (1) & (2) of section 77 deal only with the maintenance of account subsection (3) of section 77 provides that the total of the election expenses referred to in subsection (1) shall not exceed such amount as may be prescribed.

33. It is not in dispute that the maximum limit for Chhattisgarh Assembly Constituency was of Rs. 16 lakhs. While referring to statute, it states that in order to declare an election to be void, the grounds are enumerated in section 100 of the Act. Sub-section (1) (b) of section 100 relates to any corrupt practice committed by a returned candidate or his election agent or by any other person with the consent of a returned candidate or his election agent. in order to bring a matter within the scope of sub-section (1) (b), the corrupt practice has to be one defined in section 123. What is referred to in sub-section (6) of section 123 as corrupt practice is only the incurring or authorizing of expenditure in contravention of section 77. Sub section (6) of section 123 does not take into its fold, the failure to maintain true and correct accounts. The language of sub-section (6) is so clear that the corrupt practice defined therein can relate only to sub-section (3) of section 77 ie. the incurring or authorizing of expenditure in excess of the amount prescribed. Therefore, it cannot by any stretch of imagination be said that non-compliance with sections 77 (1) and (2) would also fall within the scope of section 123 (6). Consequently it cannot fall under section100 (1) (b) Therefore the necessary inference would be drawn that in absence of the pleading that the election result has been materially affected by the alleged noncompliance with the provisions or of the Rules falling back to section 77 (1) and (2) of the Act of 1951, the corrupt practice cannot be branded unless it is found that the returned candidate has exceeded the maximum expenditure of Rs. 16 lakhs according to rule 90 of the Conduct Rules of 1961. i. e. expenditure made over and above the specified limit of Rs. 16 lakhs.

34. Now if we refer to case law reported in (1995) 5 SCC 347-Gajanan krishnaji Bapat vs. Dattaji Raghobaji Meghe, Their Lordship of the Supreme Court have held that “in order to unseat a returned candidate, the corrupt practice must be specifically alleged and strictly proved to have been committed by the returned candidate himself or by his election agent or by any other person with the consent of the returned candidate or by his election agent. Suspicion, however strong cannot take the place of proof, whether the allegations are sought to be established by direct evidence or by circumstantial evidence . Since pleadings play an important role in an election petition, the legislature has provided that the allegations of corrupt practice must be properly alleged and both the material facts and particulars provided in the petition itself so as to disclose a complete cause of action”

35. A petition levelling a charge of corrupt practice is required by law, to be supported by and affidavit and the election petitioner is also obliged to disclose his/her source of information in respect of the commission of he corrupt practice. Under section123 (6) of the Act, 1951 the incurring or authorizing of expenditure in contrravention of section 77 of the Act amounts to commission of a corrupt practice. However every contravention of section 77 of the Act does not fall within the mischief of section 123 (6) of the Act. in Gajanan Krishnaji Bapat (supra), the Supreme Court while referring to the decision rendered in case of Magraj; Patodia vs. R. K. Birla AIR 1971 SC1295 has reiterated that to prove the corrupt practice of incurring or authorizing expenditure beyond the prescribed limit, it is not sufficient for the petitioner to merely prove that the expenditure beyond the prescribed limit had been incurred in connection with the election of returned candidate, but he must go further and prove that the excess expenditure was authorized or incurred with the consent of the returned candidate or his election agent. The entire reading of petition shows that the pleading to this effect that over expenditure was with consent of the returned candidate is absent it only talks about presumptive opinion and calculated figures, the pleading of facts are virtually absent.

36. Firther in case of Indira Gandhi vs. Raj Narain reported in 1975 supplementary SCC 1, the Supreme Court further affirmed the view while taking the note of the amendment Act 58 of 1974 and opined that volutary expenditure incurred by friends, relations or sympathizers of the candidate or the candidate’s political party are not required to be included in the candidate’s return of expenses, unless the expenses were incurred in the circumstances from which it could be positively inferred that the successful candidate had undertaken that he would reimburse the pary or the person who incurred the expenses it is not enough to prove that some advantage accrued to the returned candidate or even that the expenditure was incurred for the benefit of the returned candidate or that it was within the knowledge of the returned candidate and he did not prevent it, to clothe the returned candidate with the liability of committing the alleged corrupt practice. The pleading to this effect that the returned candidate had undertaken that he would reimburse the party or persong the expenditure is also absent.

37. The Supreme Court in case of jeet mohinder Singh vs. Harminder Singh Jassi (1999) 9 SCC 386 in para 40 held that “the success of a candidate who has won at an election should not be highty interfered with Any petition seeking such interference must strictly conform to the requirements of the law. The Court further held that setting aside of an election involves serious consequences not only for the returned candidate and the constituency, but also for the public at large inasmuch as reliction involves and enormous load on the public funds and administration. Therefore, the inference is strict pleading of facts has to be followed by proof of facts.

38. It has been further held in Jeet Mohinder Singh (supra), that the charge of corrupt practice is quasicriminal in character. If substantiated it leads not only to the setting aside of the election of the successful candidate, but also of his being disqualified to contest and election for a certain period. it may entail extinction of a person's public life and political career, it is further held that a trial of an election petition though within the realm of civil law is akin to trial on a criminal charge. Therefore two consequences follow i. e. firstly, the allegations relating to commission of a corrupt practice as should be sufficiently clear and stated precisely so as to afford the person charged a full opportunity of meeting the same and secondly, the charges when put to issue should be proved by clear, cogent and credible evidence to prove charge or corrupt practice a mere preponderance of probabilities would not be enough. There would be a presumption of innocence available to the person charged. The charge shall have to be proved to the hilt, in standard of proof bening same as in a criminal trial (See Quamarul islam v. S. K. kanta AIR 1994 SC 1733 FA Sapa v Singora (1991) 3 SCC 375, Manohar Joshi v Damodar Tatyaba (1991) 2 SCC 342 and Ram Singh v Col Ram Singh AIR 1986 SC 3.

39. It has been further held in Jeet Mohinder Singh (Supra) that section 83 of the Act requires every election petition to contain a concise statement of meterial facts on which the petitioner relies. It the election petition alleges commission of corrupt practice at the election, the election petition shall set forth full particulars of any corrupt practice including as full a statement as possible of the names of the parties alleged to have committed such corrupt practice and the date and place of the commission of each such practice. Every election petition must be signed and verified by the appellant in the manner laid down for the verification of pleadings in CPC an election petition alleging corrupt practice is required to be accompanied by and affidavit in Form 25 read with Rule 94-A of the Conduct of Election Rules, 1961 Form 25 contemplates the various paraticulars as to the corrupt practices mentioned in the election petition being verified by the appellant separately under two heading : (1) which of such statements including particulars are true to the appellant's own knowledge and (ii) which of the statements including the particulars are true to information of the appellant it has been held in Gajanan krishnaji Bapat case (supra) that the election petitioner is also obliged to disclose his source of information in respect of the commission of the corrupt practice. Here the entire evidence by way of affidevit and the statements made before the court by the petitioner do not disclose such compliance of the aforesaid pleading and the entire statements are only the opinion wherein the prayer is made to draw a presumption on the basis of probabilities.

40. Further in case of Kamalnath Vs. Sudesh Verma (2002) 2 SCC 410. the Supreme court has further held that mere non-disclousre of expenditure will not be a corrupt practice but incurring of expenditure in excess of the prescribed limit would be a corrupt practice it was further observed that on a combined reading of sections77 & 123 (6) of the Act, 1951 it is explicitly clear that the excess expenditure must be incurred by the candidate or by any person authorized by the candidate or his/her election agent. it was held that an expenditure incurred by a third person, who is not authorized by a candidate or who is not an election agent of the candidate will not be a corrupt practice within the ambit of Section 123 (6) of the Act. It would, therefore, be necessary to establish a corrupt practice, as contemptated under Section 123 (6) of the Act to plead requisite facts showing authorisation of undertaking of reimbursement by the candidate or his/her election agent. The court has further held that "when maintainability of an election petition is considered from the standpoint as to whether material facts have been pleaded or not in a petition allegingh corrupt practice on the ground that expenses incurred by the cnaddiate are more than the prescibed limit it would the necessary to aver the fact that the candidate has incurred the expenditure or has authorised any other person to incur the expenditure or has authorised any other person to incur the expenditure or that his election agent has incurred the expenditure and further. the candidate has undertaken the liability to remburse. These would constitude the meterial facts of an election petition, which is filed, alleging corrupt practice within the ambit of Section 123 (6) read with Section 77 of the Act and Rule 90 of the Conduct of Election Rules" Therefore, it would be necessary to examine the residue of averments made in the election petition to find out whether such meterail facts had in fact been averred in the election petition. in the instant petition when the aforesaid principles are applied, the pleading would primarily show that there is gross allenation from the above priciples and pleadings are only based upon opinion of petitioner.

41. Further the Supreme Court in case of Anil Vasudev Salgaonkar Vs. Naresh Kushali Shigaonkar (2009) 9 SCC 310 held at paras 51&57 as under

> "51 This Court in Samant N. Balkrishna v. George Fernandez (1969) 3 SCC 238 has expressed it self in no uncertain terms that the omission of a single material fact would lead to an incompelete cause of action and that an election petition without the materiel facts relating to a corrupt practice is not an election petitions at all. In Udhav Singh Vs Madhav Rao Scindia (1977) I SCC 511 the law has been enunciated that all the primary facts which must be proved by a party to establish a cause of action or his defence are material facts in the context of a charge of corrupt practice it would mean that the basic facts which constitute the ingredients of the particular corrupt practice alleged by the petitioner must the specified in order to

succeed on the charge whether in an election petition a particular fact is material or not and as such required to be pleaded is dependent on the nature of the charge levelled and the circumstances of the case. All the facts which are essential to clothe the petition with compelete cause of action must be pleaded and failure to plead even a single material fact would amount to disobedience of the mandate of section 83 (1) (a). An election petition therefore can be and must be dismissed if it suffers from any such vice. The first ground of challenge must therefore fail.

"57. It is settled legal position that all "material facts" must be pleaded by the party in support of the case set up by him within the period of limitation. Since the object and purpose is to enable the opposite party to know the case he has to meet with. in the absence of pleading a party cannot be allowed to lead evidence. Failure to state even a single material fact will ential dismissal of the election petition. The election petition must contain a concise statement of "material acts" on which the petition relies"

42. Further in (2010) 1 SCC 466-Kattinokkula Murali krishna V. Veeramalla Koteswara Rao the Supreme Court has held that it is a settled principle of law that evidence beyond the pleading can neither be permitted to be adduced nor can such evidence be taken into account. As such the standard of proof was emphasized in such case law. Similar view was adopted in (2000) 8 SCC 191- Ravinder singh Vs. Janmeja Singh wherein it was also held that "it is an the established proposition that no evidence can be led on a plea not raised in the pleadings and that no amount of evidence can cure defect in the pleadings".

43. Further in a case law reported in (2014) 1 SCC 46- Regu Mahesh alias Regu maheswar Rao Vs. Rajendra pratap Bhanj Dev the importance of setting out the sources of information in affidavits came up for consideration and it was held that the sources of information should be clearly disclosed. It was also held that real importance of setting out the sources of information at the time of presentation of the petition is to give the other side notice of the contemporaneous evidence on which the election petition is based and that will give an oppoutunity to the other side to test the genuineness and veracity of the sources of information. in the instant petition , the affidavit filed along with pettition and subsequently by way of affidavit do not carve out such separate facts and source of information.

44. Keeping in view the law laid down by the Supreme court the pleadings of the petitioner if are examined, it would show that the allegation of over-expenditure is only on the basis of some hearsay and no direct pleading or evidenbce has been placed. The pleading would show that it is only an opinion and no facts have been pleaded. Therefore, the presumption can only be drawn from the facts and not from the opinion. The Supreme Court in case of Suresh Budharmal Kalani Vs. State of Maharashtra AIR 1998 S. C. 3258 has laid down that a presumption can be drawn only from the facts and not from other presumptions by process of probable and logical reasoning.

45. In order to search out the evidence of expenditure on different heads, the statements made by way of affidavit and statements made before the Court along with the exhibited document with all pleadings were examined.

(A) With respect to the inland letters

46. The petitioner has projected in her pleading that different expenses on various heads exceeded the permissible limits and she got the valuable piece of evidence. The averment with respect to published inland letters for every voter of assembly constituency has been stated to be 205759 whereas it is pleaded that the respondent has shown total number of published documents are 5000 only. On this court when the evidence of petitioner and other witnesses are examined with respect to degree of proof placed before the Court for the expenses of inland letters, in the statement by affidavit under Order 18 Rule 4 of CPC at para 10, it is stated that 173000 letters were printed from Bilaspur national Computer and were sent to Postal Department which were seized by the postal Department and thereby the valuation of Rs. 8 lakhs has been asserted. She further made the statement that actually, there had been a preparation to print 125000 letters and were planned to be distributed. It is further stated in the affidavit that the names of receivers of such letters were also printed. However, no information was given to the Election Commission about such printing of letters whereas 175000 letters were seized from different places and at different points of time and the letters were numbering to 208000 and as such the costs should have come to Rs. 8,50,000/- No document has been exhibited and in the statement reference has been made. Therefore, the statements were on the basis of presumptive calculations and opinion.

47. Now if we turn to the statement made before the Court, the avermants are made at paras 14 to 20 in respect of the letters. in those paras, the stated that Ex P 2 a complaint was filled before the officers that on 13-11-2013 the respondent was distributing the inland letters and the expenses should be included as the expenses were not shown. She also stated that the had written the complaint that 121596 letters were seized from the post office and the cost of

the same was Rs. 6,07,980/- in continutation , it is stated that she had complained that the respondent has published two types of inland letters and total 121596 inland letters were seized from the post office and 50000 letters were already distributed and few of the letters in 10 numbers were received by the petitioner from different wards. it is further stated that she had made complaint to the Election Commission that the said expenditure incurred on inland letters was not shown in the election expenses and thereby according to the petitioner the cost would have been Rs. 10,28,795/- She stated that in the letters, the toll free number, twitter account & face book of respondent were also printed which shows that it was of respondent and despite such printing of letters in huge numbers they were not included in the expenses it is stated by the petitioner that as per her opinion, the number of voters were 205759 and therefore, it should have been presumed that the letters were sent to each an every voter, therefore, the printing & postal expenses should have been included in the election expenses by proportionately.

48. Further at para 18, the reference to newspaper has been made which published the news about the seizure of inland letters. At Para 19 of the statement the same facts are repeated that the respondent has sent different inland letters thruough the postal department and the voters who received the letters had in turn handed over the same to the petitioner. One weas addressed and sent to the young members and the other was addressed and issued to mother and sisters and the postal charges was paid @ Rs. 2.50 paise per letter but according to her opinion, the respondent had incurred expenses for the letters @ 7.50 paise per one letter as the letters were in multi- colour print. At para 20, she has stated that she had called for quotation from the publishers of such letters and the original have been placed. Except these oral statement, nothing has been proved to corroborate it.

49. if such statement of examination- in- chief of the petitioner is examined, it would reflect that she had not exhibited any document to prove the facts, however, predominantly it will show that the statements had stressed upon to draw a presumption on the basis of personal opinion. The calculation as has been opined would show that as per the petitioner, the number of voters should be multiplied by the cost of printing and postal charges of each inland letter, therefore, that expenditure should have been included. Though the reference has been made to the quotation about cost of printing but no documents have been placed and exhibited. At this stage, if we refer to the cross examination of the petitioner, at para 64 it is stated that the information of printing of inland letters have been collected on the basis of information collected by the Election Commission. Therefore, obviously the statement would be hearsay. She further stated that the seizure of 129596 inland letters is to her knowledge and information. Except the oral statement no corroborative evidence is on record.

50. The petitioner in her court statement at Para 65 stated that the complaint which was made to the Election Commission is narrated on the basis of information received from the members of the party as also of her own knowledge. At Para 71 of the cross examination, she stated that she did not come into contact with the publisher of the inland letter. it is admitted that though she knew the publisher but she had not called them in evidence to prove those facts, She admits that she had not filled any complaint against the publisher nor has lodged any report with the police At Para 74 it is stated that she admits the fact that the question of publishing and payment depends upon the inter- se relation and the publisher may also get the letters published without any cost also but the cost has to be evaluated as per the guidelines issued by the Election Commission. Therefore, no certainty has been attached to the actual proof of such statement and appears to be made on hear say.

51. The petitoner in her court statement at para 75 admits the fact that she got the information from the newspaper that 12156 inland letters were seized and had volunteered in statement that the Election Commission team also recorded the same. At para 76, he further stated that with respect to publication of 411518 inland letters with printing of inland letters no documentary evidence has been placed in this case and the expenses of Rs. 2, 57,590/- has been drawn on presumption of her own. she had volunteered that twice the inland letters had been sent to the voters and on that basis calculation was made. She further stated that she is not in know of the fact that whether or not the letters were sent to the actual voters of the Constituency No. 51 of the Stae Legislative Assembly.

52. Therefore, if the statement of the petitioner with respect to the inland letters are cosidered alotogether, it goes to point out that only by Ex. P-22 to 31 the letters have been placed and consequently the prayer is made to draw a presumption on the basis of number of voters. it being an election petition, the opinion of the petitioner as also the prayer to draw the presumption cannot be acceded as tha statement of the petitioner along- with pleadings are as vague as it could be. it only refers to making a complaint. Neither the publisher has been examined to substantiate the actual expenses nor any other evidence is placed on record to prove the fact that who got the inland letters published and at whose instances such publication was made and how much publication was made. By merely procuring few letters i. e. documents Ex. P-22 to 31, it cannot be substantiated the actual expenses incurred over the inland letters used during the election campaign.

53. Over this issue, further when we refer to the statement of mamta Rai (P. W. -2), at para 7 of the affidavit she stated that the respondent Brij Mohan Agrawal had sent the inland letters to every house and all the voters and it was sent through postal department. If we refer to the cross examination of this witness, at para 8, she stated that inland letters were sent through Sunder Nagar Post Office and further amended the statement by saying that it was given to one Vimla Nagarchi and in turn it was given to the petitioner. Vimla nagarchi was not examined in this case. As against this, the petitioner has not stated that the inland letters were given through Mamta Rai to her, thereby mamta Rai had contradicted the averments. She further at para 9 has stated that she had not made any written complaint but had made oral objection P.W. 3 Vinod Bharat had made statement with respect to the inland letters. At para 7 of the statement of this witness, it is stated that all the voters had received the inland letters which were sent by Brujmohan Agrawal. At para 14 of cross examination he stated that the inland letters were received by him in person. He further stated that the letters were received by one Smt. Phootan and this witness had received the same from her and in turn had handed orver to petitioner kiranmayee nayak Whereas the petitioner has not stated anything that the letters were handed over to her by Vinod Bharat. The pleading in this respect is also absent. Therefore, in the evidence of receipt of inland letters, the witness of petitioner itself had given contradictory statement to each other.

54. The witness chandrahas nayak (P. W. 4) at Para 9 of the affidavit filed under Order 18 Rule 4 of CPC has stated that he has made a complaint to the CEO, on 13-11-2013 and asked to add Rs. 8 lakhs as election expenses over head of the inland letter. He further stated at Para 10 that 174134 inland letters were sent through business post service from Bilaspur National Computer to the Postal Department and the election Commission has seized those letters. Therefore, the expenses of Rs. 8 lakhs have been proved. He further made a reference to a letter of National Computer Bilaspur and stated that Rs. 3 lakhs business had already been given and further Rs. 5 lakhs business was expected from respondent. Therefore, since the same was being done as such the presumption would show that another 3,50,000 to 4,00,000 letters were kept ready to be sent. The said letter has not been exhibited though it is attached along- with Ex. P-2 the letter dated 07-11-2013. The statements would show that the averments of expenses were on a mathematical calculative presumption No. actual proof of the statements are on record. The Statement is silent with respect to fact who had given letters for distribution. on which date it was given whether it was prior to filing of nomination either of the petitioner or the respondent and who was getting it printed it was not the respondent alone, but there were also other contestants in the election fray including the petitioner. Therefore in absence of any direct evidence, the enfrance of the letter cannot be attributed to the respondent alone so as to calculate the expenses on presumption.

55. Further at this juncture, if we refer to the statement of P. W. 4 at Para 15 of cross examination, he has shown his inability to explain on what date. Ex. P. 18 was sent for Bilaspur He also stated that he never went to National Computer Bilaspur to enquire about the fact that who get the letters published. The document Ex. P 18 is only a complaint made by the petitioner and not by the witness Therefore, this also contradicts the statement of the petitioner on the factual issues.

56. Further on the issue when we refer to the statement of Pawan Kumar Lahre (P. W. 5.) who is senior Post Master, Main Post Officer, Raipur, it shows that he has made an averment that certain letters were seized in which the sender's name was shown as Brijmohan Agrawal and the stamp of Rs. 2.50/- was affixed. At para 4 he has stated that on 11-11-2013 the information was sent by official communication that on 10-11-2013, 23750 and on 11-11-2013, 20080 inland letters which contain the sender's name as Brijmohan Agrawal were seized. On having asked that whether such copies of seized inland letters were in the record, it was stated categonally that such inland letters were not in the records in this context, if we again fall back to the statement of the petitioner quo number of inland letters seized. it is stated that 125000 letters were seized. The letters have been proved by this witness which have been marked as Ex. P-22-31. A perusal of the letter would show that it bears the stamp of post- office, therefore the objection which was made at the time of evidence that it is not admissible is over-ruled and it having been proved in the official capacity bares the seal, the letters are admitted in evidence but not benefit flows out of it to the petitioner.

57. With respect to the letters, when the statement of P. W. 6 Mahendra Kumar Sharma, the Postmaster of Bilaspur Office is examined, he stated that the tickets attached in Ex. P-22 to 31, by franking the postal stamps were attached by Bilaspur Office. The witness at para 3 stated that the sender's name in this letters was shown to be Brij Mohan Agrawal but he did not bring the papers on record in respect of the same and clarified that the records were available at Mail Business Center, Railway Mail Service, Bilaspur, It is further stated that the records were not in his jurisdiction, therefore, he did not bring the records. In the cross examination of this witness, he stated that which were the documents required were not shown in the summons and further made statement that if such letters were sent by kiranmayee Naik, he cannot positively affirm the same. Therefore the statement of this witness with respect to the signature of letters is of no use to the petitioner.

58. On similar issue, the statement of Sanjay Agrawal (P. W. 7) who was the Additioanl District Magistrate and the Returning Officer at the relevant time is also relevant During examination when he was confronted with Ex. P-1 which is register for maintenance of day to day account, he stated that these documents were never produced before the Returning Officer. With respect to the CD at para 10, he has stated that certain letters which are part of the record were given by the Video Observer Team and as per the letter the CD Videography was enclosed with such seized inland letter. when the witness was confronted with this fact that certain marking was in the CD, it was objected and stated that the said CDs were not related to the videography and no seizure was made and the CDs were not further certified to be admissible under the evidence Act. A perusal of the said document would show that the CDs so placed do not bear any certificate which is required u/s 65-B(2) of the Evidence Act. The witness has also not admitted the contents thereof, therefore. in absence of such certificate u/s 65-B of the Evidence Act and on denial of the witness. The same cannot be accepted as an evidence in this case Further referring to the CD at Para 30, he stated that what was recorded in the CD only it can be explained by the Video Observation team. Therefore, this witness was not author of such CD.

59. In the entire statement with respect to the inland letters, no evidence has come on record to show that when such seizure of inland letters was made and what was the date of seizure. Whether it was during the election or prior to it only presumption could have been drawn. As per the witness. The returned candidate Brijmohan Agrawal has filed his nomination on 13-11-2013 and thereafore. the expenses could only be added if it was in curred on 13-11-2013 or thereafter On this issue when we refer to the statement of P. W. 9 Sangeet Singla who was expenditure observer at the relevant time. at para 8 he has stated that sending of the letters like nature was permissible. He has further stated that so far as it relates to Anulagnak 21, he dissented over the expenses. The petitioner witness though had referred to Anulagank 21 but it has not been placed on record the petitioner therefore has failed to even bring her own contention whereby the Expenditure Observer alleged to have dissented Consequently, the non filing of such document and proving the same bebore the court or withholding the same will compel the Court to draw an adverse interence with respect to the same.

60. Dr. Ashish Singh Thakur (P. W. 10) who is Superintendent of Post office Raipur, has referred to a letter dated 07-11-2013 but stated that the said letter is not available in his record. it is stated that on 10-11-2013 and 11-11-2013 certain seizure was made and panchnama was prepared, neither the seizure nor the Panchnama is placed before the Court. Only the oral evidence has been made. The petitioner though had made avermants in the petition but has failed to take care of filing documents before the Court.

61. Likewise P. W. 11 Smt. Nidhi Chhibber who is Chief Election Officer though was examined on behalf of the petitoner but she had not brought any document. She further stated that she had not brought any document of Ex. P-1(C) as she was not aware of the subject. She had not narrated anything about such document.

62. Now coming to the statement of P. W. 12 Mahdev Kavre who was working at the relevant time as returning officer has stated that document Ex. P-1 (C) was deposited by Brij Mohan Agrawal, thereby the existence of the document is proved. This document though was deposited by the respondent before the Nodal Officer but the same is proved by the petitioner. The contents of this document dated 29-10-2013 show that YUVA PATRA Pamphlet has been shown of Rs. 5000/- and on 30-10-2013, the postal charges has been shown as Rs. 13,000/- of Mail Business Center. Bilaspur and pamphlets of 2500 from National Computer. The documents filed and proved by the petitoner have been explained by the respondent Brij Mohan Agrawal of para 74 and he stated that he has not printed any inland letters and distributed during election. White he was confronted with the letter Ex. P-22 the witness completely denied the document. The petitioner has thereby failed to prove by reliable evidence that the documents Ex P-22 to 31 were actually printed by the respondent for distribution. Neither acceptable evidence is on record nor any evidence has been adduced to show that the said letters were published by the respondent, thereafter was sent through postal department and during such transition it was seized in order to prove the fact the petitioner was required to call the documents and prove the same as otherwise the inference cannot be drawn only on the statement of petitoner that the respondent has published the inland letters for each voter and they were being sent through postal department.

(B) With respect to expenses over Toll Free Number

63. With respect to the toll free number 18004191427, the petitioner has not stated anything in her chief At para 77, she admits that she has not placed any document to show that the expenses of Rs. 7 lakhs was incurred by respondent for the toll free number. She also admits that expenses of Rs. 2 lakhs has been pleaded at para 8 but no document has been placed on record. Likewise she admitted the fact that though statement was made that for one call 35-40 paise was incurred on each voters but no document has been placed. Thereaftor, P. W. 3 Vinod Bharat though stated about the MMS and Voice Messages but pleading to this effect is completely absent Consequently, with respect to toll free number though the pleading is made but it is without proof and though certain statements were mad but they were without any pleading vice versa. Consequently no evidence is on record to evaluate that how much expenses was incurred on the toll free number by the respondent it is also not clear from the statement that when it was

obtained whether prior to the filing of nomination or in between the filing of nomination and declaration of result and the dates would be crucial to decide the issue. Consequently with respect to toll free numbers as alleged to be used by respondent, no evidence of expenses is on record.

(C) EXPENSES OF LED T.V.

64. Now with regard to the expenses of LED TV, the petitioner in her affidavit at para 12 has stated that one day expenses for LED TV quotation was of Rs. 30,000/- per day However, no documents have been placed and exhibited for such quotation to read it in the evidence. In para 90 of the cross examination, the petitioner has stated that the averments made in para 11 about the LED Picture, vehicle with LED picture she has not enquired as to who was the owner of the same and no information was gathered from RTO department too. She further stated that she is not in know of any dealer of Tata vehicle with LED Picture and stated that when two vehicles were seized, she obtained the quotation and on the basis of quotation Rs. 60,000/- towards rent has been projected. Further at para 91 she stated that expenses shown by the respondent of Rs. 5600/- over the LED TV propaganda has been wrongly been shown.

65. In the statement of Brij Mohan Agrawal D W 1 at Paras 44-46 he has denied the seizure of LED vehicle. Now when we refer to para 44 of cross examination of Brijmohan Agrawal (the returned candidate) it is stated that two vehicles were seized, but about the seizure of LED vehicle has been denied. He further denied that he vehicles with LED TV were used in the election it is further stated that no vehicle was used during election without any permission. The document which is placed before the Court do not show the fact of seizure. The respondent though has stated the seizure of vehicle, the seizure of vehicle with LED picture has been denied. Therefore, when the petitioner was with specific case that the LED vehicles were seized, the expenses incurred could have been proved by placing necessary quotation and the seizure documents. it could have been established by documentary evidence that the vehicles which were seized were with LED picture. Merely for the reason that the vehicle was seized , presumption cannot be drawn on the oral statement of petitioner that the vehicles were equipped with LED TV and were seized. The petitioner has, therefore, failed to place on record any acceptable evidence with respect to the expenses incurred by the respondent/returned candidate over the vehicle with LED.

(D) DISTRIBUTION OF BOOKS

66. The petitioner at para 30 has stated that certain books were distributed by the respondent which was in 48 pages having multi -colour printing and 50,000 copies were published. No book has been marked and placed in evidence or exhibited on record so as to accept the statement of the petitioner. At para 92 of the cross examination of the petitioner, she admits that the book titied as Chhattisgarh Ka Gaurav Raipur Ke Atma Samman Ke prateek was published. Though the name of publisher was shown but she has not enquired from the publisher that who had got if published. The number of books published is shown to be 205759 and it is stated that expenses of Rs. 25/- were incurred but neither any document nor any such book has been placed on record to show that what were the book nor any other evidence of publisher or any relevant witness has been produced to show that the books were existing At para 93, the respondent has given the explanation that 5000 books were published, therefore, in absence of any evidence as to how many books were published who published the books ; only the oral statement and infernee of the petitioner cannot be accepted to ascertain the figure coupled with the fact that the same was done in between a specific period of time of filling of nomination and declaration of result.

(E) CALLING OF T. V. ARTISTS AND DASHERA FESTIVAL FUNCTION

67. The petitioner has further deposed that respondent had invited various TV artists to campaign has election and the expenditure for the same was not disclosed by him it was further stated by the petitioner that the complaint dated 14-10-2013 Ex. P-3 was made by her. The evidence would show that the invitation card of the said function is marked as Ex. P-5 to P-11. The complaint dated 14-10-2013 Ex. p-3 contains the fact that on 13-10-2013 a function on the occasion of Dashera was organized by Sarvajanik Dashera Samit and invitation card Ex. p-6 shows the date, therefore. it the function was held on 13-10-2013 it was before the filing of nominatin and the expenditure incurred can only be considered in between filing of nomination and declaration of result. Apparently the same was before the filing of nomination, therefore the court is not required to go into such details of expenses incurred Further more, the avements made in this regard is completely on presumption and opinion. No evidence is placed on record that who paid the amount to the artists and when it was paid. The petitioner also participated in the said function. Consequently. the expenses cannot be stated to be incurred by the respondent alone

(F) DISTRIBUTION OF BUTTONS, KADA etc.

68. With respect to the distribution of buttons, kada, metal chain, metal batch, wrist chain etc, the facts have been pleaded by the petitioner at para 10 of the petition. P. W. 1. the petitioner at Para 11 of the affidavit had stated that certain articles were received by the petitioner during her election campaign which included calendar. hand belt and were distributed by the respondent. Further she has stated that according to her presumption, the expenditure would have been around Rs. 30 lakhs. The statement before the Court at paras 20-25, she referred to a complaint made vide Ex P-11 that respondent has distributed hand belt, button calendar CD card etc., and according to her opinion. distribution of such goods comes within the ambit of corrupt practice as there was a complete prohibition for such distribution, She further stated that in order to distribute the goods, the respondent has incurred expenditure of Rs. 20 lakhs which should have been enquired and added to the expenses of the petitoner.

69. In cross examination of the witness, she deposed that the goods which were distributed are stated to be distributed on the basis of information received from the Election Commission, therefore, she herself has destroyed her evidence and proved the fact that it was an hearsay. She further stated at para 79 that for the goods i. e. button, metal chain, kada, metal badge, small button. Wrist bracelet, expenses were given by the election commission and further at para 81 she has stated that the goods which were given by the respondent bears the photograph of the respondent for which a complaint was made to the Election Commission and the complaint was made after completion of election on 02--01-2014. she further stated that though a complaint was made on 29-10-2013 before the Election Commission, but the complaint has not been placed on record and was sent by mobile to the Election Commission. Further in cross examination at paras 81 to 85 she admits the fact that the goods which were in Ex P-11A were of the election of 2013 have not been shown but since it bears the photographs of Narendra Modi, therefore, the presumption could have been drawn that they were used in 2013 election itself.

70. Referring to the expenditure, it is stated that according to her estimation, the expenses of Rs. 30 lakhs were incurred for distribution of such goods and according to the calculation and multiplication of the same with the number of voters, the expenses was projected in the statement of affidavit she stated that expenses would be upto Rs. 30 lakhs . Before the Court the petitioner had stated that the expenditure of Rs. 20 lakhs was incurred in distribution of goods. The statement would further show that the information about the distribution of goods were received from the party workers. Therefore, no direct evidence is placed on record that the goods were distributed by the respondent. The witnesses of the petitioner Smt. mamta Rai at para 8 of the affidavit stated that the goods were distributed to the voters at the time of election and she had collected the same and sent the complaint to the election commission whereas in the cross examination at para 9, it is stated that the goods were given by some BJP workers at his residence. Further the witness has stated that since she was out for the election campaign, as such, by which BJP worker was given at her residence, she is not able to name him. Therefore, this witness has contradicted her statement itself from her chief itself.

71. The witness P. W. 3 Vinod Bharat has stated that in the year 2013. different goods were distributed by the respondent and the information of it was received by him in person as also from other friends. incross examination at para 7 the witness has stated that the goods were given at his residence by some of the BJP worker but by whom it was given, he is not able to name as he was not available in the house. He further referred to the distribution of goods to his brother at his shop but the brother of witness has not given any evidence and it is also hearsay.

72. The witness P. W. 4 Chandrahas Naik at para 12 has also made a statement on an hearsay and his opinion that expenses should have been Rs. 30 lakhs for distribution of goods P. W. 7 the returning officer referring to Ex. P- 11-A about the goods has stated at para 11 that rubber band bracelets. key chains were available in his office and when the complaint was made about the distribution of goods by the petitioner on 08-11-2013 the same was enquired and after enquiry it was found that the complaint was vague. Therefore, the witness of the plaintiff itself has destroyed the evidence of distribution of goods by the respondent.

73. Taking into totality of the statement of witness it would show that the evidence of the petitioner is too vague and if it is read along with the statement of D. W. 1 it would show that he has completely disowned the fact fo distribution of goods. Therefore, only on the basis of presumption and assumption, it cannot be stated that the petitioner was able to prove the fact that the respondent has distributed the goods.

(G) ON DUMMY VOTING MACHINES

74. Now referring to dummy votting machine the petitioner has contended at para 13 of the petition that dummy voting machines were distributed. The pleading would also show that on presumption, the calculation was made. Nothing has been stated in the affidavit However, in the statement before the Court at para 32, she referred to complaint of 02-01-2014 and stated that in 228 election booths along with table chair Pandals and demo machine, an expenditure of Rs. 1,52,470/- was incurred. Neither any document has been placed and proved nor any direct evidence has been adduced it is also based on hearsay. The complaint was made vide Ex.P-14 but simply because the complant was made, it cannot replace the fact of proof. At para 69 of the cross examination. She stated that the facts stated were on the basis of information and at para 93 of the cross examination, reference of presumptive calculation has been made that according to the number of booths having been calculated with the number of dummy voting machines, certain expenses should have been added Neither any evidence is existing nor any document is placed to come to the conclusion of the expenses incurred with respect to dummy voting machine.

75. Further it the statement of P. W. 4 Chandrahas Naik is examined it would show that at para 15 of the affidavit this witness has referred to complaint made to the Election Commission and stated that a request was made to Election Commission to add Rs. 1,52,470/- but in the evidence of P. W. 7, P. W. 9 & P. W. 11, no question was ever put that certain complaint was made, therefore merely because the complaint was made, the same cannot be accepted as an expenditure. No evidence is existing in this regard.

76. With respect to the existence of certain CDs i. e., video which are placed in election trial, it would be necessary to discuss the law governing the field. The Evidence Act has been amended by the I. T. Act to introduce the admissibility of the electronic records. The concept of electronic evidence has been incorporated to provide the court with a frame work to incorporate and introduce these new innovations in scientific technology. Under Section 3 of the Evidence Act, the definition of term "evidence" has been amended to mean and include ;

> "(a) all statements which the court permits or requires to be made before it by a witness ; in relation to matters of fact under inquiry, such statements are called oral evidence ;
>
> (b) all documents including electronic records produced for the inspection of the court ;
>
> such documents are called documentary evidence."

77. In accordance with the amended definition of "evidence" documentary evidence has been amended to include electronic records. The term "electronic evidence" has been given the same meaning as assigned in the IT Act which means date record or date generated image or sound stored, received or sent in an electronic form or micro file or computer generated micro fiche

78. According to the new provisions introduced inot the Evidence Act, Section 65-A provides that the contents of an electronic record may be proved in accordance with the provisions of S. 65-B of the Evidence Act which provides that notwithstanding anything contained in the Evidence Act, any information contained in an electronic record which is printed on a paper, stored, recorded or copied in optical or magnetic media produced by a computer (computer output) shall be deemed to be a document, provided the conditions specified in S 65-B (2) are statisfied in relation to the information and computer in question. Such a document is admissible in any proceedings, without further proof or production of the original, as evidence of any contents of the original or of any fact stated therein of which direct evidence would be admissible.

79. Before a computer output is admissible in evidence, the following conditions must be fulfilled. as set out in Section 65-B (2) :

> "(a) the computer output containing the information was produced by the computer during the period over which the computer was used regulairly to store or process information for the purpose of any activities regularly carried on over that period by the person having lawful control over the use of the computer ;
>
> (b) during the said period, information of the kind contained in the electronic record or of the kind from which the information so contained is derived was regularly fed into the computer in the ordinary course of the said activities ;

(c) through the material part of the said period the computer was operating properly or, if not then in respect of any period in which it was not operating properly or was out of operation during that part of the period, was not such as to affect the electronic record or the accuracy of its contents ; and

(d) the information contained in the electronic record reproduced or is derived from such information fed into the computer in the ordinary course of the said activities."

80. The laws on section 65-B of the Evidence Act came up for interpretation before Their Lordships in case of (2014) 10 SCC 473-Anvar P. V. Vs. P. K. Basheer wherein Hon'ble the Supreme Court held thus in paragraphs 14, 15 & 16.

"14 Any documentary evidence by way of an electronic record under the Evidence Act, in view of Sections 59 and 65-A can be proved only in accordance with the procedure prescribed under Section 65-B Section 65-B deals with the admissibility of the electronic record. The purpose of these provisions is to sanctify secondary evidence in electronic form generated by a computer. it may be noted that the section starts with a non- obstante clause. Thus notwithstanding anything contained in the Evidence Act, any information contained in an electronic record which is printed on a paper, stored recorded or copied in optical or magnetic media produced by a computer shall be deemed to be a document only if the conditions mentioned under sub section (2) are statisfied, without futher proof or production of the original . The very admissibility of such a document i. e. electronic record which is called as computer output depends on the satisfaction of the four conditions under Section 65-B (2) of the Evidence Act.

(i) The electronic record containing the information should have been produced by the computer during the period over which the same was regularly used to store or process information for the purpose of any activity regularly carried on over that period by the person having lawful control over the use of that computer.

(ii) The information of the kind contained in electronic record or of the kind from which the information is derived was regularly fed into the computer in the ordinary course of the said activity.

(iii) During the material part of the said period , the computer was operating properly and that even if it was not operating properly for some time, the break or breaks had not affected either the record or the accuracy of its contents ; and

(iv) the information contained in the record should be a reproduction or derivation from the information fed into the computer in the ordinary course of the said activity.

15. Under section 65-B (4) of the Evidence Act if it is desired to give a statement in any proceedings pertaining to an electronic record, it is permissible provided the following conditions are statisfied.

(a) There must be a certificate which identifies the electronic record containing the statement

;

(b) The certificate must describe the manner in which the electronic record was produced.

(c) The certificate must furnish the particulars of the device involved in the production of that record.

(d) The certificate must deal with the applicable conditions mentioned under Section 65-B (2) of the Evidence Act; and

(e) The certificate must be signed by a person occupying a responsible official position in relation to the operation of the relevant device."

16. It is further clarified that the person need only to state in the certificate that the same is to the best of his knowledge and belief. Most importantly, such a certificate must accompany the electronic record like computer printout compact disc (CD), video compact disc (VCD), pen drive, etc.,

pertaining to which a statement is sought to be given in evidence when the same is produced in evidence. All these safeguards are taken to ensure the source and authenticity. which are the two hallmakes pertaining in electronic record sought to be used as evidence. Electronic records being more susceptible to tampering, alteration transposition, excision, etc., without such safeguards, the whole trial based on proof of electronic records can lead to travesty of justice"

81. P. W. 7 has stated that C. D. No. 91 was not issued by him,. it is stated that the Video Observer Team can only demonstrate the same Referring to C. D. No. 91, this witness has stated that it only engrafts a nomenclature of a joint rally of 31-10-2013. The CD was admitted in evidence with an objection. Apparently the CD. would show that it suffers with non-compliance of section 65(B) (2) of the Evidence Act. The witness has further stated that he has not seen the contents of CD. further if the CDs are examined in the analogy of the aforesaid law laid down it would show that no kind of certificate as required has been placed and produced by petitioner. Further to corroborate the fact if the statement of P. W. 7 is examined, it would reveal that at para 13, P. W. 7 has completely denied the existence of CD and it is stated that the CD No. 91 was not issued by him and the Video Observer can only demonstrate them.

82. With respect to the other C. Ds, which have been referred by the petitioner at para 40 were said to be supplied to her by District Election Commission. The said C. Ds., were not exhibited during evidence A perusal of it shows that it is contained in a cover and over it certain written marking is made. The said CDs are also not accompanied with any certificate so as to make it admissible. There is nothing on record to show by the statement of witnesses on behalf of election commission that the same CDs which are kept in a plastic wrapper was issued to the petitioner in the facts of the case, since the CDs so placed do not comply the requirement of section 65 (B) (2) of (The Indian) Evidence Act, 1872, the same cannot be read in evidence for any purpose being inadmissible in evidence.

83. Now when we come to the evidence adduced by respondent, it shows that the respondent in order to prove the expenses has produced document Ex D-2. The document Ex. D-2 touches upon the explanation given by the respondent as against the notices given to the respondent during election campaign. The documents purports that when the respondent was served with notices dated 10-11-2013, 16-11-2013 and 20-11-2013 the respondent came out with an explanation on the expenses. The same fact is corroborated by P. W. 7 Sanjay Agrawal who has proved the document Ex. D-2 and the signature therein that it was of Siddharth kumar Paradesi, the District Election Officer and of Mahadev Kavre from 'A to A' to 'B to B'. A perusal of the Document D- 2 demonstrates that certain notices which were given to the respondent in respect of expenditure incurred during campaign which was replied and on the basis of said reply, two of the members of District Expenditure Committee accepted the expenditure shown by respondent to be correct and the copy was sent to the respondent. Therefore, the contention of the petitioner that notices were given about over expenditure which is fortified with Anulagnak 11 would be of no help to the petitoner. Even otherwise the Anulagnak-11 filed with the petition has not been accepted in evidence.

84. On the contrary, existence of Ex. D-2 having been proved and no objection was taken, therefore, as per the law laid down in (2007) 13 SCC 476 (Oriental Insurance Vs.Premlata Shukla), the document will be deemed to be admitted in evidence which necessarily proves that Election Commission was also satisfied with explanation over the expenditure for which the notices were given. So under the circumstances no inference could be drawn that during the election campaign the service of notices for over expenditure was given to the respondent as such exceeding the limits of expenses have been proved .

85. In the light of the aforesaid discussion made if the pleadings and evidence in this case are examined it will lead to an irresistible conclusion that the petitioner has failed to prove that the expenditure was made over and above the prescribed limit. The pleading of the petitioner would show that she has expressed her opinion on presumption. The facts have also been narrated on the basis of presumption. The pleadings of the actual facts as well as the evidence is also missing. It is settled law that in the matter of election jurisprudence, the success of a candidate who has won at an election should not be lightly interfered with and any petition seeking such interference must strictly conform to the requirements of law. The setting aside of election involves serious consequences not only for the returned candidate and the constituency but also for the public at large inasmuch as re-election involves an enormous load on the public funds and administration. The charge of corrupt practice is quasi criminal in character. Therefore a trial of an election petition though within the realm of civil law is akin to trial on a criminal charge. The allegations relating to commission of a corrupt practice should be sufficiently clear and stated precisely so as to afford the person charged with full opportunity of meeting the same . Secondly, the charges when put to issue should be proved by clear, cogent and credible evidence. To prove charge of corrupt practice is merely preponderance of probabilities would not be enough and the charge will have to be proved to the hilt, the standard of proof being the same as in criminal trial.

86. Further the averments and the evidence which led are too vague and merely an opinion has been expressed by the petitioner. No actual facts have been placed before this Court. Therefore, on scrutiny of the entire facts i. e., the pleading and evidence it would be in the realm of conjecture to uphold the contecture of the petitioner that the expenditure were incurred over and above the limit as the witness of petitioner have themselves admitted that when the notice for over expenditure were given they have been properly explained.

87. A prausal of the petition would further show that it was filed on 17-01-2014 by Advocate Statish Chandra Verma on behalf of petitioner Smt. kiranmayee Naik. The security deposit was further paid by Advocate Statish Chandra Verma on 16.-01-2013. The same is filed as Annexure P-12. Therefore, it shows that the petition has been filed not by the petitioner but it was by her advocate. The Supreme Court in case of G. V. Sree Rama Reddy Vs. Returning officer (2009) 8 SCC 736 has held that while interpreting the special statute, the Court has to consider the intention of the legislature. it was held that in spite of existence of adeqrute provision in the CPC relating to institution of a suit, the Representation of Pepole act, 1951 prescribes how the election petitions are to be presented and the Act also mandates the material to be accompanied with the election petition. it has also been held that the election petition has to be presented by the petitioner himself/herself. Section 81 of the R. P. Act mandates the same which relates to Presentation of petitions.

88. For the sake of brevity, para 19 of (2009) 8 SCC 736-G. V. Sreerama Reddy (supra) is repoduced herein below :

19. One can discern the reason why the petition is required to be presented by the petitioner personally. An election petition is a serious matter with a varietly of consequences. Since such a petition may lead to the vitiation of a democratic process, any procedure provided by an election statute must be read strictly. Therefore the legislature has provided that the petition must be presented "by" the petitioner himself so that at the time of presentation the High Court may make preliminary verification which ensures that the petition is neither frivolous nor vexatious.

89. Therefore, it being the statutory mandate no deviation can be craved out in case of filing of election petition and there cannot be estopel against law. Hence the petition is also liable to be dismissed on this ground also as the finding in respect of maintainability of the election has been held against the petitioner by a finding of issues nos. 1 to 3. The issue framed as 4 & 5 are no longer required to be adjudicated separately as the election petition in held to be dismissed.

90. In view of the above conclusion, this Court is of the view that the petitioner has failed to prove that corrupt practice was committed by the returned candidate by incurring expenses more than the prescribed limit. As an upshot of discussions, the election petition is liable to be dismissed and is hereby dismissed. No order as to costs.

Sd/-

GOUTAM BHADURI,
Judge.

आदेश से,

हस्ता./-
(केदार नाथ भार),
प्रमुख सचिव,
भारत निर्वाचन आयोग.

ELECTION COMMISSION OF INDIA

Nirvachan Sadan, Ashoka Road, New Delhi-110001

New Delhi, dated 22nd September, 2017— Bhadrapada, 1939 (Saka)

No. 82/FS-1/EP/(2/2014)/CG-LA/2017.—In pursuance of Section 106(b) of the Representation of the People Act, 1951 (43 of 1951), the Election Commission hereby publishes Order dated the 21st July, 2017 of the High Court of Chhattisgarh Bilaspur in Election Petition No. 02 of 2014.

HIGH COURT OF CHHATTISGARH, BILASPUR

E.P. No. 2 of 2014

PETITIONER : 1. Smt. Kiranmayee Nayak W/o Vinod Nayak Aged About 46 Years presently The Mayor, Raipur (C.G.), R/o Nayak Advocate Chamber, Tatyapara, Raipur, P. S. Maudhapara, Tah And Distt. Raipur C. G.

VERSUS

RESPONDENT : 1. Brijmohan Agrawal S/o R. L. Agrawal Aged About 56 Years presently Agriculture Minister, Govt. of Chhattisgarh. R/o Ramsagar Para, P S Maudhapara, Tah And Distt. Raipur C.G.

For the Petitioner : Mr. Kapil Sibbal Sr. Advocate with Mr. S. C. Verma, Adovacate

For the Respondent : Mr. S. S. Shukla, Mr. B. P. Sharma, Mr. Raj Kumar Shukla, Mr. M. L. Sakat and Mr. Hari Agrawal Advocates.

Hon'ble Shri Justice Goutam Bhaduri

C. A. V. JUDGMENT

Reserved on 17.05.2017

Delivered on 21.07.2017

1. The instant election petition concerns with the election held for the Constituency No. 51 of Raipur South City in the year 2013. By such election, respondent No. 1 was declared elected as returned candidate. The said election is under challenge in this petition filed by petitioner Smt. Kiranmayee Nayak who was the contesting Candidate on behalf of the Indian National Congress. The main relief sought and the prayer made in this petition is that the election of respondent be declared as null and void on the ground that the election was won by applying and adopting corrupt practice by the respondent. The further prayer is also made to debar the respondent from contesting election for a period of six years and to take appropriate criminal action against the respondent.

2. Admittedly, the petitioner and respondent contested the election for constituency No. 51 i. e. South Raipur city Legislative Assembly of Chhattisgarh. The schedule of election which is not in dispute was as under.

Date of notification of election	-	04-10-2013
Date of filling of nomination	-	From 25-10-2013 to 01-11-2013
Date of withdrawal of nominations	-	03-11-2013
Scrutiny of nomination papers and allotment of Symbal	-	04-11-2013
Date of polling	-	19-11-2013
Date of counting of the votes and declaration of the result.	-	08-12-2013

3. (i) The Petitioner has preferred the petition u/s 80, 80 A, 100, 10 A & 77 of the Representation of the People Act, 1951 (hereinafter referred to as the " Act of 1951") challenging the validity of election of respondent on the ground of corrupt practice as he incurred expenses in excess of permissible limit of Rs. 16 lakhs which was prevailing at the relevant point of time. As has been pleaded and contended by learned counsel for the petitioner that u/s 123 (6) of the Act of 1951 it would amount to corrupt practice if the candidate incurs unauthorized expenditure in contravention of section 77 of the Act. It is pleaded and contended by the petitioner that the respondent has submitted. Form 14 showing much less expenditure incurred at election whereas it is Pleaded at para 3 of the petition that only Rs. 4,30,390/- was incurred as expenses but actually the assessment of expenses made by the Election Commission was much more it is stated at para 4 of the petition that the expenses worked out by election commission was Rs. 17,46,576,75. The counsel would submit that section 77 of the Act of 1951 requires every candidate to keep a separate and correct account of entire expenditure in connection with the election incurred or authorized by him or by his election agent for the period between the date on which he has been nominated and the date of election of result thereof it is stated that respondent had incurred expenditure beyond the limit of Rs. 16 lakhs as prescribed by the election commission, therefore, it would amount to corrupt practice Consequently the election has to be set aside.

(ii) it was further pleaded and contended during course of arguments that respondent got published two different sets of inland letters for every voter of the constituency and as against 2,05,759, voters, the expenses would have been much more on this head. It was stated that the inland letters were received by large number of voters and upon complaint made by the petitioner, election commission had seized 1,21,596 inland letters whereas the respondent has shown only 5000 inland letters of two different types which were published. It is stated that the total number of inland letters comes to 4,11,518 and considering the cost of one inland letter at the rate of Rs. 5/-, the actual cost comes to Rs. 20,57,590/- with respect to letters it is further pleaded that in response to the petitioners correspondence, the Postal Department, Raipur had stated that respondent had deposited and amount of Rs 8 lakhs towards expenditures of inland letters and franking was done over the same but the respondent has shown the expenditure of only Rs. 5000/- in Form No. 14 Further it has been pleaded and contended that respondent has given a toll free number in inland letters published by him and submitted the expenditure for the same as Rs. 15,843/- whereas the expenditure for obtaining toll free numbers costs Rs. 2 lakhs and further every call would be charged @ 35 to 40 paise per voter. Therefore, the total expenses would come to Rs. 7/- lakhs on this count.

(iii) Further it is contended that two actors of TV serial "Devon Ka Dev Mahadev" were invited by the respondent who had requested the voters of Raipur to caste their vote in favour of respondent and the petitioner had also attended such function in the capacity of Mayor of the city. Therefore, the entire expenses of Rs. 27 lakhs should have been included but the same was not shown in Form-14 by the respondent.

(iv) It was further contended that distribution of Batan, Kada, Metal Chain, Metal Batch, small button, wrist chain has been admitted by the respondent but the expenditure thereof was not shown in Form-14 and despite the fact that the goods are not permitted for the purpose of election campaign, the same was done and thereby corrupt practice was admitted.

(v) It was further submitted that the corrupt practice adopted by respondent for running the LED picture on a Tata Magic Vehicle was shown to be Rs. 5600/- whereas the same was Rs. 60,000/- per day as provided by the concerned agency. It was also conteneded that the respondent has distributed a book namely. "Chhattisgarh Ka Gaurav Va Chhattisgarh ke Atmasamman ka Prateek" with his photograph and work done by him as minister. The expenditure for publishing 5000 such books was shown as Rs. 24,150/- @ Rs. 4.60/- per book whereas. If the total number of voters i. e. 2,05,759 are considered and the rate is taken @ Rs. 25/- per book the expenditure would come to Rs. 05,14,975/-

(vi) It was also stated that the respondent has also used three dummy voting machines in every polling booth and for 239 polling booths, the total expenses would be Rs. 1,97,175/- taking into cost of Rs. 275/- per one dummy polling machine whereas the respondent has shown the expenditure of only Rs. 2,001/- for the use of 40 dummy polling machines. It is further alleged that the respondent and his agents have plied large number of vehicles in the constituency but the details of the same have not been submitted as required by the Act.

4. Learned counsel for the petitioner submitted that according to the statement of Singla, the economic observer, he did not approve the final expenditure, therefore, the expenditure which was settled was without his consent and the account could not have been accepted and consequently, the petitioner has discharged the burden of proof and regarding corrupt practice of every expenditure. He referred to a decision of Supreme Court in (1996) 3 SCC 624-R Puthunainar Alhithan and others Vs P. H. Pandian and others and would submit that it is difficult to establish the meticulous evidence of expenditure incurred by a candidate as it is in the exclusive knowledge and custody of returned candidate or other person. Referring to the deposition of P. W. 1. it is contended that no cross examination with respect to the expenses shows in the affidavit has been made therefore. it would amount to acceptance and referring to further statements of Mr. Sangeet Singla (P. W. 9) and Nidhi Chhibber (P. W. 11) it is stated that the documents which were showing the expenses of the respondent though were called but the officers deliberately avoided to bring the documents. Consequently the adverse inference has to be drawn.

5. It is stated that the petitioner, therefore, had discharged the burden of proof that the respondents had incurred expenses beyond the prescribed limit by summoning expenditure registers required to be manitained with the Elcection Commission, as per the compendium of instructions on Election Expenditure Monitoring. It is stated that though the summons were issued from time to time to bring the original Annexure 11 and Annexure 14 which were also accepted as Ex D-1 (C) and though the summons were served on P. W. 11 Nidhi Chibber, the Chief Election Officer, Chhattisgarh ; P. W. 12 Mahadev Kavre, the Nodel Officer of expenditure P.w. 7 sanjay Agrawal the returning officer who despite summons having been served the originals of documents were not produced it is further contended that the documents so summoned were required to be maintained as per the Act and Rules and Guidelines formulated by the Election commission and they have force of law under article 324 of Constitution of India, therefore, the discovery of documents should have been ensured so that the originals could be brought on record.

6. It is stated that had the documents been produced it could have been accepted that the respondent has incurred the expenditure beyond the limit is further submitted that the documents could not have been in the possession of the Election Commission and no mode of obtaining certified copy is provided to prove the case. It is further submitted that the petitioner though sought copies of Annexure P-11 and Annexure P-14 [Ex. P-1 (c)] by payment of challan, the same was obtained and it was produced in the Court. Therefore, it would have been deemed to be proved which shows the expenses incurred by the respondent, it is stated that Annexure P-11 was the basis on which 3 notices were issued by the Returning Officer to the respondent on 10-11-2013, 16-11-2013 and 20-11-2013 and as per the statement of P. W. 7, the notices were required because the expenses reflected in Annexure 11 was Rs. 17,46,576/- Consequently, the expenses which were shown in Annexure 11 has been proved that it was beyond the limit of expenditure it is further submitted that the petitioner, therefore, had discharged her burden by bringing on record Annexure 11 on the basis of which the notices have been issued by the returning officer who admits the fact of issuance of notice to the respondent and such statement is also corroborated by P. W. 9 the expenditure observer who has stated that the expenditure incurred exceeded the prescribed limit at the time of election it is further submitted that the authenticity of the notice can be inferred from the fact that the notices for over-expenditure was given following the guidelines issued by the Election Commission, therefore, there would be an inference of official Act done unless proved otherwise.

7. Referring to (2003) 8 SCC 673-Sushil Kumar V. Rakesh kumar it was submitted that initial burden to prove the allegations in the election petition athough was upon the election petitioner but for proving the facts which were within the special knowledge of the respondent, the burden was upon him in terms of section 106 of the Evidence Act and the expenditure incurred by the respondent in respect of each item was within his knowledge and having not been disclosed by the respondent, the same has to be inferred from the statements of P. W. 7 and P. W. 9.

8. It is further stated that in the light of section 106 of the Evidence Act, the petitioner had exhausted all the remedies available to him by summoning the documents in order to prove the corrupt charges but the witness having not produced the same it automatically allowed the petitioner to lead secondary evidence u/s 63 of the Evidence Act Therefore, the secondary evidence which is the Annexures filed with the petition would be admissible by virtue of section 65 of the Evidence Act which shows the limit of expenditure was exceeded by the respondent.

9. It is further contended that as per the statement of p. w. 9., the disagreement was shown by Mr. Sangeet Singla as the true expenditure was not shown. in order to refure such presumption the respondent could have produced the final return which was filed before the election commission but having not been done so, the inference would be against the respondent. It is also stated that the respondent did not discharge his burden to show that how the expenditure incurred for the items was well within the limit and failed to produce any document in this regard. Therefore, the adverse inference has to be drawn against the respondent considering the testimony of P. W. 7. It is further submitted that Ex. D-2 would be inadmissible in eividence as the authors of document have not been called and reference was made to a case law reported in AIR 1954 Bombay 305 Madholal Sidhu Vs. Asian Assurance Co. Ltd. Consequently, it is submitted that the expenses incurred by the petitioner was beyond limit prescribed, as such, the corrupt practice was adopted and the election petition may be accordingly allowed.

10. Per contra, learned counsel for the respondent would submit that at the time of filing the petition, the petitioner was not present which would be evident from the order sheet dated 17-01-2014 as it was produced through the Advocate only. It is stated that the secunty deposit was made a day prior to 17-01-2014, therefore the petitioner was not a party to the entire filing and it was done through his advocate Shri S. C. Verma Advocate, in a result, as per the law laid down in G. V. Sreerama Reddy Vs. Returing officer reproted in (2009) 8 SCC 736, the election petition is liable to be dismissed on this count only that the election petition was not filed by the petitioner herself it is further stated that the petitioner has claimed that she be declared as returned candidate in place of respondent therefore, the petitioner is required to implead all the contesting candidates as parties to the present election petition as per requirement of section 82 of the Act, 1951. it is stated that the said objection having been raised by filing an application under order 7 Rule 11, one of the relief(s) was withdrawn but the same cannot be considered for the reason that the election can only be tested at the time of its presentation and if the election petition is filed with a defect, the same cannot be corrected subsequently by amendment application.

11. It is further contended that while dismissing the application under Order 7 Rule 11 CPC, this Court by and order dated 26-10-2015 observed that the rejection of application shall not have any adverse affect on the decision of various issues which is already framed by this Court, therefore at the time of final adjudication of the petition the same can be reexamined again Referring to section 10 (a) of Act of 1951, it is stated that the petition with regard to election expenditure can only be filed before the election commission of India and the said petition having not been filed before the election commission the present petition is not maintainable before the Court.

12. It is further submitted that section 79 (b) of the Act of 1951 defines the word “candidate” and the petitioner has not proved the fact that the expenses were made by the respondent/candidate it was further contended that the nomination was made on 29-10-2013 by the respondent and the election results were declared on 08-12-2013 therefore only the period in between the same can be considered whether the expenses of more than 16 lakhs was incurred during such period and not beyond it is contended that such fact has not been proved by the petitioner that on what date, which expenses were incurred.

13. It was further submitted that it was the duty of election petitioner to establish such fact by way of pleading and the evidence that the expenditure of Rs. 17,46,576.75 was made uptill 28-11-2013 but the petitioner has failed to prove such facts and a Perusal of Anulagnak 11 would reveal that it has no evidentiary value as it do not contain any signature of the official issuing the same and is a private document which was produced by the petitioner. It is further submitted that though the submission made that Anulagnak 11 which is filed with the petition is admissible but the same was neither a certified copy nor was obtained by proper mode as such the inference of the Evidence Act cannot be drawn.

14. It is stated that there is huge divergence of pleading and proof in this case Referring to the Statement of witness P. W. 7 Sanjay Agrawal, P. W. 9 Sangeeta Singla it is stated that witness may be summoned to file document as per Order 16 Rules 6 & 10 CPC and in this case no such procedure was followed and therefore, the case is pressed only on presumption. It is also submitted that for proving a document, a procedure has been laid down u/s 61 to 63 of the Evidence Act and the contents should have been proved by either primary evidence or secondary evidence. Therefore, the document having only been produced cannot be accepted on an inference by taking it to be an admitted document. It is submitted that the burden of proof of fact which is the knowledge of the petitioner should have been discharged and no inference should have been drawn for the same.it is submitted that no reliable evidence has been placed so as to prove the document. Consequently, the petition is without any evidence, in a result liable to be rejected and heavy costs be imposed.

15. On the basis of pleadings of parties this Court had farmed the following issues on 26-06-2015.

S. No.	Issues	Finldings
01	Whether the returned candidate had incurred expenses over and above the specified limit declared by the Election Commission of India and placed false statements of expenditure and thereby the election is bad in law ?	"Not Proved"
02	Whether the returned candidate has adopted corrupt practice by circulation of inland letters and concealed the expenses thereof for which the Election Commission has taken cognizance, as a consequence of which the election can be declared as void ?	"Not Proved"
03	Whether the returned candidate has offered and distributed various goods to the voters to procure votes in his favour and as such adopted corrupt practice ?	"Not Proved"
04	Whether the election petition is liable to be dismissed on the ground that the petitioner has amended his prayer after filling the petition for withdrawal of relief ?	Not required to be adjudicated in view of finding arrived at for issue Nos. 1 to 3.
05	Whether the petition is liable to be dismissed for not following the mandate of Section 83 of the Representation of Pepple Act, 1951 about the pleading	Not required to be adjudicated in view of finding arrived at for issue Nos. 1 to 3.

16. I have heard the respective parties and have also perused the evidence. The issue nos. 1 to 3 are interlinked to each other and touches upon on the question of expenses incurred by the returned candidate whether exceeded the prescribed limit fixed during election. Therefore, are being adjudicated jointly as involved factual aspect.

17. The primary attack of petitioner is that the Anulagnak 11 and Anulagnak 14 which shows the expenditure of respondent is admissible in evidence u/s 65 of the Evidence Act. Anulagnak-11 shows the expenses incurred over and above Rs. 16 lakhs before the date of result. The question arises, whether such documents though not exhibited in evidcence can be acted upon as secondary evidence. The Anulagnak 14 and Anulagnak 11 are filed as Annexure P-2 and Annexure P-3 with the petition respectively. It is stated that Anulagnak 14 and Anulagnak 11 attached with the petition were obtained by payment of the prescribed fee of challan and certified copies were obtained.

18. It was further stated that 3 notices deled 10-11-2013, 16-11-2013 & 20-11-2013 were sent to the respondent for over-expenditure by the returning officer which tallies with the expenses shown therein as such when Anulagnak 11 despite being summoned was not brought by the witness, if fortifies that the over expenditure should have been admitted and it would be admissible as secondary evidence as the same was maintained by the Election Commision under the statutory mandate in this context, when we refer to Anulagnak 14 and Anulagnak 11 which are filed as Annexure P-2 and Annexure P-3 with the petition, the same have not been exhibited in evidence. On the basis of certain entries made therein, it was stated that it should have been admitted as over expenditure talled with the notice. The petitioner who has claimed that to obtain the copies of the said Anulagnak 11 and 14 challan was deposited vide Ex. P-32 (C). The challan would show that Rs. 84/- was deposited by one Chandrahas Naik and not by the petitioner on 28th December, 2013. The purpose for deposit of challan shows that it was paid for copy of Expenditure register whereas the Anulagnak 14 and Anulagnak 11 are not copies of the expenditure register it refers to shadow register kept by Eclection Commission to compare the expenditure shown by the candidate. Therefore prima facie , it appears that

challan for which the amount were deposited were other than those have been referred to as Anulagnak 14 and 11 with the petition if the documents were obtained as certified copies both the documents Anulagank 14 and anulangak 11 (Annexure P-3) would show that neither it has been certified by the authorized officer issuing the same not any seal is appended there too. The officer of the election commission P. W 11 Nidhi Chibber who is the Chief Election Officer P. W. 7 Sanjay Agrawal and P. W. 9 Sangeet Singla who have been examined on behalf of the petitioner have not endorsed the fact. The petitioner could have got those documents admitted by the witnesses Both the documents do not bear any signature of officer as to who had issued the same or any seal is shown to be appended as certified copy. Therefore, the presumption of certified copy cannot be drawn at the outset.

19. The statement of P. W.-11 Smt. Nidhi Chibber who was the Chief Election Officer at the relevant time would show that when she was confronted with the documents at para 3 she refused to accept the fact that those documents are one and the same as that of E x. P-1 (C), Prima facie on comparison, the documents also do not appear to be one and the same as it appears to be register maintenance of day to day account whereas Anulagnak 11 wherein the petitioner has heavily relied upon is with respect to the shadow register of the expenses so prepared. Nothing is on record to show that by whom it was prepared and when if was prepared in statement of Sangeet Singla (P. W. 9) who was the Expenditure Observer, he has not stated anything about Anulagnak 11 and Anulagnak 14 The document was not confronted to him so as to prove the existence of it.

20. At this juncture, section 76 of the Evdence Act which defines the certified copy of the public document would be relievant to refer. For the sake of brevity section 76 of the Evidence Act is reproduced herein-below.

"76. **Certified copies of public documents.—** Every public officer having the custody of a public document, which any person has a right to inspect, shall give that person on demand a copy of it on payment of the legal fees therefore together with a certificate written at the foot of such copy that it is a true copy of such document or part thereof, as the case may be, and such certificate shall be dated and subscribed by such officer with his name and his official title, and shall be sealed, whenever such officer is authorized by law to make use of a seal; and such copies so certified shall be called certified copies.

Explanation— Any officer who by the ordinary course of official duty is authorized to deliver such copies, shall be deemed to have the custody of such documents within the meaning of this section."

21. Further, section 77 of the Evidence Act is about the proof of document by production of certified copies. Section 77 reads as under :

" 77. **Proof of documents by peoduction of certified copies.—**Such certified copies may be produced in proof of the contents of the public documents or parts of the public documents of which they purport to be copies."

22. In continuation section 79 speaks about the presumption as to the genuineness of the certified copies. Therefore in order to draw a presumption u/s 79 of the Evidence Act a documents is necessary required to be a certified copy of the public document so as to satisfiy the section 76 of the Evidence Act Anulagnak 11 and Anulagank 14 would show that it is only a typed copy without any seal or signature and Ex. 32(C) is aslo not about payment of money to obtain copy thereof but was for something else i. e. to obtain copy of expenditure register. Therefore, the submission of petitioner that Anulagnak 11 and Anulagnak 14 should have been admitted in evidence as secondary evidence is copletely misconceived and cannot be accepted as the same do not fulfill the minimum requirement of section 76 & 77 of the Indian Evidence Act. 1872

23. It would also be relevant to note that while the witnesses P. W. 7, P. W. 9 & P. W. 11 were examined by the petitioner and if the documents were not brought by them, which were summoned by petitioner and were alleged to have supported the petitioner despite the fact known to the pertitioner that documents were missing at the time of evidence the petitoner proceeded further with recording of the evidence. The petitioner did not bother to follow the procedure laid down in Order 16 Rule 6 & 10 of CPC which covers the summoning and production of documents Order 16 Rule 6 CPC mandates summons to produce documents and Order 10 speaks about the procedure when the witnes fails to bring the documents without summons. The petitioner if was conscious of the fact that the documents Anulagnak 11 & 14 which were attached with the petition existed in the office of Election Commission during recording of evidence of the witnesses could have taken a breath to call for them instead opted to proceed with the examination of witnesses to continue wiht his evidence. Therefore, the petitioner cannot turn down and say and pass the burden on witnesses to raise its voice that the documents are automatically admitted in evidence.

24. When the documents are admitted in evidence, Order 13 Rule 4 sub rule (1) of CPC provides as under : 4 (1) Subject to the provisions of the next following sub-rule there shall be endorsement on every document which has been admitted in evidence in the suit the following particulars, namely : (a) the number and title of the suit, (b) the name of the person produced the documents (c) the date on which it was produced, and (d) a statement of its having been so admitted; and the endorsement shall be signed or intialled by the judge. Therefore it will point out that even mere admission of documents in evidence do not amount to its proof. Admission in evidence of a party's document may in specified cases exclude the right of opposite party to challenge its admissibility. The most prominent exampples are when secondary evidence of a document within the meaning of sections 63-65 of the Evidence Act is adduced without having foundation for its admissibility or where a document not properly stamped is admitted in evidence attracting applicability of section 36 of the Stamp Act. Therefore, it is settled proposition that even the admission of document in evidence is not to be confused with the proof of document.

25. When the Court is called upon to form a judicial opinion whether the document has been proved, disproved or not proved the Court would look not at the document alone or only at the statement of witnesses standing in the box it would take into consideration the probabilities of case as emerging from whole record. it could not have been an intendment of any law, rule or practice direction to expect the Court applying its judicial mind to the entire record of the case. The necessary inference therefore that absence of putting an endorsement for the purpose of identification no sooner a document is placed before a witness would cause serious confusion as one would be left simply guessing or wondering while was the document to which the witness was referring to which deposing. in the facts of this case not even endorsement over the Anulagnak 11 & 14 was made. On the contrary the witnesses of the petitioner have not supported the existence of such document. Therefore, the documents i. e., Anulagnak-11 and 14 not being certified copies of finds any supports of its existence from the witness of petitioner itself cannot be read in evidence for any purpose.

26. Further, evaluating the pleadings, documents and the evidence go to show that the challenge in this election petition is predominanlty on the ground that the returned candidate has incurred expenditure beyond the maximum prescribed limit thereby was invoived in the corrupt practice, Reading of the R. P. Act 1951 with reference to corrupt practice,section 123 (6) speaks of incurring or authorizing of expenditure in contravention of section 77. Section 123 (6) is reproduced hereinbelow :

Sec. 123 of the R. P. Act of 1951

123. **Corrupt practices :-** The following shall be deemed to be corrupt practices for the purposes of this Act.

(1) XXX
(2) XXX
(3) XXX
(4) XXX
(5) XXX
(6) The incurring or authorizing of expenditure in contravention of section 77

27. Since this section makes a reference to section 77 of the Act of 1951, necessarily section 123 (6) has to be read along with section 77 which reads as under ;

Sec, 77 of the R. P. Act 1951

"77. Account of election expenses and maximum thereof .- (1) Every candidate at an election shall, either by himself or by his election agent, keep a separate and correct account of all expenditure in connection with the election incurred or authorized by him or by his election agent between the date of on which he has been nominated and the date of declaration of the result thereof, both dates inclusive.

Explanation 1.- For removal of doubts, it is hereby declared that-

(a) The expenditure incurred by leaders of a political party on account of travel by air or by any other means of transport for propagating programme of the political party shall not be deemed to be the expenditure in connection with the election incurred or authorized by a candidate of that political party or his election agent for the purposes of this sub-section ;

(b) Any expenditure incurred in respect of any arrangements made, facilities provided or any other act or thing done by any person in the service of the Government and belonging to any of the classes mentioned in clause (7) of Section 123 in the discharge or purported discharge of his official duty as mentioned in the proviso to that clause shall not be deemed to be expenditure in connection with the election incurred or authorized by a candidate or by his election agent for the purposes of this sub-section.

Explanation 2.- For the purpose of clause (a) of Explanation 1, the expression "leaders of a political party" in respect of any election means.

(i) Where such political party is a recognized political party, such persons not exceeding forty in number, and

(ii) Where such political party is other than a recognized political party, such persons not exceeding twenty in number,

Whose names have been communicated to the Election commission and the Chief Electoral Officers of the States by the political party to be leaders for the purposes of such election, within a period of seven days from the date of the notification for such election published in the Gazette of India or Official Gazette of the State, as the Case may be, under this Act :

Provided that a political party may, in the case where any of the persons referred to in clause (i) or, as the case may be, in clause (ii) dies or ceses to be a member of such political party, by further communication to the Election Commission and the Chief Electoral Officers of the States, substitute new name, during the period ending immediately before forty-eight hours ending with the hour fixed for the conclusion of the last poll for such election for the name of such person died or ceased to be a member, for the purposes of designating the new leader in his place.

(2) The account shall contain such particulars, as may be prescribed.

(3) The total of the said expenditure shall not exceed such amount as may be pre scribed".

28. Section 100 (1) (b) lays down that the commission of corrupt practice as a ground for declaring the election void in this context, Section 100 (1) (b) (d) is reievant here and quoted below.

Section 100 of the R. P. Act. 1951

100. **Grounds for declalring election to be void-**(1) Subject to the provisions of such sub-section (2) if the High Court is of the opinion-

(a) XXX XXX XXX

(b) that any corrupt practice has been committed by a returned candidate or his election agent or by any other person with the consent of a returned candidate or his election agent ; or

(c) XXX XXX XXX

(d) that the result of the election, in so far as it concerns a returned candidate, has been materially affected -

(i) XXX XXX

(ii) by any corrupt practice committed in the interests of the returned candidate by an agent other than his election agent or

(iii) XXX XXX

(iv) by any non-cmpliance with the provisions of the Consitution of this Act or of any rules or orders made under this Act.

The High Court shall declare the election of the returned candidate to be void.”

29. Reading of the aforesaid provisions would indicate that section 77 (1) of the Act 1951 makes it mandatory for every candidate at an election to the State Legislative Assembly or the House of People to keep a separate and correct account of all expenditure incurred or authorized by him or by election agent, between the date on which he was nominated and the date of declaration of result of election both dates inclusive. The total of the said expenditure shall not exceed such amount as may be prescribed u/s 77 (3). U/s 77 (2), the account shall contain such particulars as may be prescribed. Rule 90 of the Conduct of Election Rules 1961 prescribes the limit of election expenditure for parliamentary and assembly constituencies in each of the States and union territories. The particulars which have to be shown in the account are prescribed in Rule 86 of those Rules, failure to maintain the account is an electoral offence u/s 177 of the IPC. Reading of entire provisions of section 77 would lead to show that all expenditure incurred or authorised by the political parties friends and supporters of a candidate in connection with his election is to be considered as part of candidates expenditure except the expenditure on travelling of leaders of his political party.

30. Further coming back to the point of pleading, reading of section 83 would show that where an election petition alleges commission of corrupt practice by a candidate, the pleading must contain (a) direct and detailed nature of corrupt practice as defined in 1951 Act (b) the details of every important particular giving the time place, names of persons, use of words and expressions etc. it must also clearly appear from the allegations that the corrupt practice was indulged with either express or implied consent of the candidate or his election agent.

31. Now while examining the pleading along with evidence the law and principles which occupy the field would be necessary to be considered in a case law reported in (1999) 1 SCC 666- L. R. Shivarama Gowda vs. T. M. Chadrashekhar (para 10) Their Lordships of the Supreme Court have laid down the law that in order to declare and election to be void under section 100 (1) (d) iv), it is absolutely necessary for the election petioner to plead that the result of the election so far as if relates to returned candidate has been matenally affected by the alleged non-compliance with the provisions of the Act of the rules. Now reverting the election petition, it would go to show that the specific pleading is absent about the fact that the election result has been materially affected for non compliance of any rules or the provision. in the case in hand since the court is examining the allegation of election petition as against the will of the popple , therefore the necessary pleading to this effect has to be there in the election petition to hold that there is a violation of specific rules of direction issued by the Election Commission coupled with the fact that the result of the election of the returned candidate has been materially affected by the alleged non-compliance.

32. Further at para 18 of the case (supra), the supreme court while analyzing the application of section 77 further held that incurring or authorizing or expenditure in contravention of section 77 of the act is a corrupt practice and section 77 provides that every candidate of an election shall keep a separate and correct account of all expenditure in connection with the election incurred or authorized by him or by his election agent and that the accounts shall contain such particulars as may be prescribed Rule 86 of the Conduct of Election Rules, 1961 sets out the particulars to be contained in the account of election expenses. It has been further held that subsections (1) & (2) of section 77 deal only with the maintenance of account subsection (3) of section 77 provides that the total of the election expenses referred to in subsection (1) shall not exceed such amount as may be prescribed.

33. It is not in dispute that the maximum limit for Chhattisgarh Assembly Constituency was of Rs. 16 lakhs. While referring to statute, it states that in order to declare an election to be void, the grounds are enumerated in section 100 of the Act. Sub-section (1) (b) of section 100 relates to any corrupt practice committed by a returned candidate or his election agent or by any other person with the consent of a returned candidate or his election agent. in order to bring a matter within the scope of sub-section (1) (b), the corrupt practice has to be one defined in section 123. What is referred to in sub-section (6) of section 123 as corrupt practice is only the incurring or authorizing of expenditure in contravention of section 77. Sub section (6) of section 123 does not take into its fold, the failure to maintain true and correct accounts. The language of sub-section (6) is so clear that the corrupt practice defined therein can relate only to sub-section (3) of section 77 ie. the incurring or authorizing of expenditure in excess of the amount prescribed. Therefore, it cannot by any stretch of imagination be said that non-compliance with sections 77 (1) and (2) would also fall within the scope of section 123 (6). Consequently it cannot fall under section100 (1) (b) Therefore the necessary inference would be drawn that in absence of the pleading that the election result has been materially affected by the alleged noncompliance with the provisions or of the Rules falling back to section 77 (1) and (2) of the Act of 1951, the corrupt practice cannot be branded unless it is found that the returned candidate has exceeded the maximum expenditure of Rs. 16 lakhs according to rule 90 of the Conduct Rules of 1961. i. e. expenditure made over and above the specified limit of Rs. 16 lakhs.

34. Now if we refer to case law reported in (1995) 5 SCC 347-Gajanan krishnaji Bapat vs. Dattaji Raghobaji Meghe, Their Lordship of the Supreme Court have held that "in order to unseat a returned candidate, the corrupt practice must be specifically alleged and strictly proved to have been committed by the returned candidate himself or by his election agent or by any other person with the consent of the returned candidate or by his election agent. Suspicion, however strong cannot take the place of proof, whether the allegations are sought to be established by direct evidence or by circumstantial evidence . Since pleadings play an important role in an election petition, the legislature has provided that the allegations of corrupt practice must be properly alleged and both the material facts and particulars provided in the petition itself so as to disclose a complete cause of action"

35. A petition levelling a charge of corrupt practice is required by law, to be supported by and affidavit and the election petitioner is also obliged to disclose his/her source of information in respect of the commission of he corrupt practice. Under section123 (6) of the Act, 1951 the incurring or authorizing of expenditure in contrravention of section 77 of the Act amounts to commission of a corrupt practice. However every contravention of section 77 of the Act does not fall within the mischief of section 123 (6) of the Act. in Gajanan Krishnaji Bapat (supra), the Supreme Court while referring to the decision rendered in case of Magraj; Patodia vs. R. K. Birla AIR 1971 SC1295 has reiterated that to prove the corrupt practice of incurring or authorizing expenditure beyond the prescribed limit, it is not sufficient for the petitioner to merely prove that the expenditure beyond the prescribed limit had been incurred in connection with the election of returned candidate, but he must go further and prove that the excess expenditure was authorized or incurred with the consent of the returned candidate or his election agent. The entire reading of petition shows that the pleading to this effect that over expenditure was with consent of the returned candidate is absent it only talks about presumptive opinion and calculated figures, the pleading of facts are virtually absent.

36. Firther in case of Indira Gandhi vs. Raj Narain reported in 1975 supplementary SCC 1, the Supreme Court further affirmed the view while taking the note of the amendment Act 58 of 1974 and opined that volutary expenditure incurred by friends, relations or sympathizers of the candidate or the candidate's political party are not required to be included in the candidate's return of expenses, unless the expenses were incurred in the circumstances from which it could be positively inferred that the successful candidate had undertaken that he would reimburse the pary or the person who incurred the expenses it is not enough to prove that some advantage accrued to the returned candidate or even that the expenditure was incurred for the benefit of the returned candidate or that it was within the knowledge of the returned candidate and he did not prevent it, to clothe the returned candidate with the liability of committing the alleged corrupt practice. The pleading to this effect that the returned candidate had undertaken that he would reimburse the party or persong the expenditure is also absent.

37. The Supreme Court in case of jeet mohinder Singh vs. Harminder Singh Jassi (1999) 9 SCC 386 in para 40 held that "the success of a candidate who has won at an election should not be highty interfered with Any petition seeking such interference must strictly conform to the requirements of the law. The Court further held that setting aside of an election involves serious consequences not only for the returned candidate and the constituency, but also for the public at large inasmuch as reliction involves and enormous load on the public funds and administration. Therefore, the inference is strict pleading of facts has to be followed by proof of facts.

38. It has been further held in Jeet Mohinder Singh (supra), that the charge of corrupt practice is quasicriminal in character. If substantiated it leads not only to the setting aside of the election of the successful candidate, but also of his being disqualified to contest and election for a certain period. it may entail extinction of a person's public life and political career, it is further held that a trial of an election petition though within the realm of civil law is akin to trial on a criminal charge. Therefore two consequences follow i. e. firstly, the allegations relating to commission of a corrupt practice as should be sufficiently clear and stated precisely so as to afford the person charged a full opportunity of meeting the same and secondly, the charges when put to issue should be proved by clear, cogent and credible evidence to prove charge or corrupt practice a mere preponderance of probabilities would not be enough. There would be a presumption of innocence available to the person charged. The charge shall have to be proved to the hilt, in standard of proof bening same as in a criminal trial (See Quamarul islam v. S. K. kanta AIR 1994 SC 1733 FA Sapa v Singora (1991) 3 SCC 375, Manohar Joshi v Damodar Tatyaba (1991) 2 SCC 342 and Ram Singh v Col Ram Singh AIR 1986 SC 3.

39. It has been further held in Jeet Mohinder Singh (Supra) that section 83 of the Act requires every election petition to contain a concise statement of meterial facts on which the petitioner relies. It the election petition alleges commission of corrupt practice at the election, the election petition shall set forth full particulars of any corrupt practice including as full a statement as possible of the names of the parties alleged to have committed such corrupt practice and the date and place of the commission of each such practice. Every election petition must be signed and verified by the appellant in the manner laid down for the verification of pleadings in CPC an election petition alleging

corrupt practice is required to be accompanied by and affidavit in Form 25 read with Rule 94-A of the Conduct of Election Rules, 1961 Form 25 contemplates the various paraticulars as to the corrupt practices mentioned in the election petition being verified by the appellant separately under two heading : (1) which of such statements including particulars are true to the appellant's own knowledge and (ii) which of the statements including the particulars are true to information of the appellant it has been held in Gajanan krishnaji Bapat case (supra) that the election petitioner is also obliged to disclose his source of information in respect of the commission of the corrupt practice. Here the entire evidence by way of affidevit and the statements made before the court by the petitioner do not disclose such compliance of the aforesaid pleading and the entire statements are only the opinion wherein the prayer is made to draw a presumption on the basis of probabilities.

40. Further in case of Kamalnath Vs. Sudesh Verma (2002) 2 SCC 410. the Supreme court has further held that mere non-disclousre of expenditure will not be a corrupt practice but incurring of expenditure in excess of the prescribed limit would be a corrupt practice it was further observed that on a combined reading of sections77 & 123 (6) of the Act, 1951 it is explicitly clear that the excess expenditure must be incurred by the candidate or by any person authorized by the candidate or his/her election agent. it was held that an expenditure incurred by a third person, who is not authorized by a candidate or who is not an election agent of the candidate will not be a corrupt practice within the ambit of Section 123 (6) of the Act. It would, therefore, be necessary to establish a corrupt practice, as contemptated under Section 123 (6) of the Act to plead requisite facts showing authorisation of undertaking of reimbursement by the candidate or his/her election agent. The court has further held that "when maintainability of an election petition is considered from the standpoint as to whether material facts have been pleaded or not in a petition allegingh corrupt practice on the ground that expenses incurred by the cnaddiate are more than the prescibed limit it would the necessary to aver the fact that the candidate has incurred the expenditure or has authorised any other person to incur the expenditure or has authorised any other person to incur the expenditure or that his election agent has incurred the expenditure and further. the candidate has undertaken the liability to remburse. These would constitude the meterial facts of an election petition, which is filed, alleging corrupt practice within the ambit of Section 123 (6) read with Section 77 of the Act and Rule 90 of the Conduct of Election Rules" Therefore, it would be necessary to examine the residue of averments made in the election petition to find out whether such meterail facts had in fact been averred in the election petition. in the instant petition when the aforesaid principles are applied, the pleading would primarily show that there is gross allenation from the above priciples and pleadings are only based upon opinion of petitioner.

41. Further the Supreme Court in case of Anil Vasudev Salgaonkar Vs. Naresh Kushali Shigaonkar (2009) 9 SCC 310 held at paras 51&57 as under

> "51 This Court in Samant N. Balkrishna v. George Fernandez (1969) 3 SCC 238 has expressed it self in no uncertain terms that the omission of a single material fact would lead to an incompelete cause of action and that an election petition without the materiel facts relating to a corrupt practice is not an election petitions at all. In Udhav Singh Vs Madhav Rao Scindia (1977) I SCC 511 the law has been enunciated that all the primary facts which must be proved by a party to establish a cause of action or his defence are material facts in the context of a charge of corrupt practice it would mean that the basic facts which constitute the ingredients of the particular corrupt practice alleged by the petitioner must the specified in order to succeed on the charge whether in an election petition a particular fact is material or not and as such required to be pleaded is dependent on the nature of the charge levelled and the circumstances of the case. All the facts which are essential to clothe the petition with compelete cause of action must be pleaded and failure to plead even a single material fact would amount to disobedience of the mandate of section 83 (1) (a). An election petition therefore can be and must be dismissed if it suffers from any such vice. The first ground of challenge must therefore fail.
>
> "57. It is settled legal position that all "material facts" must be pleaded by the party in support of the case set up by him within the period of limitation. Since the object and purpose is to enable the opposite party to know the case he has to meet with. in the absence of pleading a party cannot be allowed to lead evidence. Failure to state even a single material fact will ential dismissal of the election petition. The election petition must contain a concise statement of "material acts" on which the petition relies"

42. Further in (2010) 1 SCC 466-Kattinokkula Murali krishna V. Veeramalla Koteswara Rao the Supreme Court has held that it is a settled principle of law that evidence beyond the pleading can neither be permitted to be adduced nor can such evidence be taken into account. As such the standard of proof was emphasized in such case law. Similar view was adopted in (2000) 8 SCC 191- Ravinder singh Vs. Janmeja Singh wherein it was also held that "it is an the established proposition that no evidence can be led on a plea not raised in the pleadings and that no amount of evidence can cure defect in the pleadings".

43. Further in a case law reported in (2014) 1 SCC 46- Regu Mahesh alias Regu maheswar Rao Vs. Rajendra pratap Bhanj Dev the importance of setting out the sources of information in affidavits came up for consideration and it was held that the sources of information should be clearly disclosed. It was also held that real importance of setting out the sources of information at the time of presentation of the petition is to give the other side notice of the contemporaneous evidence on which the election petition is based and that will give an oppoutunity to the other side to test the genuineness and veracity of the sources of information. in the instant petition , the affidavit filed along with pettition and subsequently by way of affidavit do not carve out such separate facts and source of information.

44. Keeping in view the law laid down by the Supreme court the pleadings of the petitioner if are examined, it would show that the allegation of over-expenditure is only on the basis of some hearsay and no direct pleading or evidenbce has been placed. The pleading would show that it is only an opinion and no facts have been pleaded. Therefore, the presumption can only be drawn from the facts and not from the opinion. The Supreme Court in case of Suresh Budharmal Kalani Vs. State of Maharashtra AIR 1998 S. C. 3258 has laid down that a presumption can be drawn only from the facts and not from other presumptions by process of probable and logical reasoning.

45. In order to search out the evidence of expenditure on different heads, the statements made by way of affidavit and statements made before the Court along with the exhibited document with all pleadings were examined.

(A) With respect to the inland letters

46. The petitioner has projected in her pleading that different expenses on various heads exceeded the permissible limits and she got the valuable piece of evidence. The averment with respect to published inland letters for every voter of assembly constituency has been stated to be 205759 whereas it is pleaded that the respondent has shown total number of published documents are 5000 only. On this court when the evidence of petitioner and other witnesses are examined with respect to degree of proof placed before the Court for the expenses of inland letters, in the statement by affidavit under Order 18 Rule 4 of CPC at para 10, it is stated that 173000 letters were printed from Bilaspur national Computer and were sent to Postal Department which were seized by the postal Department and thereby the valuation of Rs. 8 lakhs has been asserted. She further made the statement that actually, there had been a preparation to print 125000 letters and were planned to be distributed. It is further stated in the affidavit that the names of receivers of such letters were also printed. However, no information was given to the Election Commission about such printing of letters whereas 175000 letters were seized from different places and at different points of time and the letters were numbering to 208000 and as such the costs should have come to Rs. 8,50,000/- No document has been exhibited and in the statement reference has been made. Therefore, the statements were on the basis of presumptive calculations and opinion.

47. Now if we turn to the statement made before the Court, the avermants are made at paras 14 to 20 in respect of the letters. in those paras, the stated that Ex P 2 a complaint was filled before the officers that on 13-11-2013 the respondent was distributing the inland letters and the expenses should be included as the expenses were not shown. She also stated that the had written the complaint that 121596 letters were seized from the post office and the cost of the same was Rs. 6,07,980/- in continutation , it is stated that she had complained that the respondent has published two types of inland letters and total 121596 inland letters were seized from the post office and 50000 letters were already distributed and few of the letters in 10 numbers were received by the petitioner from different wards. it is further stated that she had made complaint to the Election Commission that the said expenditure incurred on inland letters was not shown in the election expenses and thereby according to the petitioner the cost would have been Rs. 10,28,795/- She stated that in the letters, the toll free number, twitter account & face book of respondent were also printed which shows that it was of respondent and despite such printing of letters in huge numbers they were not included in the expenses it is stated by the petitioner that as per her opinion, the number of voters were 205759 and therefore, it should have been presumed that the letters were sent to each an every voter, therefore, the printing & postal expenses should have been included in the election expenses by proportionately.

48. Further at para 18, the reference to newspaper has been made which published the news about the seizure of inland letters. At Para 19 of the statement the same facts are repeated that the respondent has sent different inland letters thruough the postal department and the voters who received the letters had in turn handed over the same to the petitioner. One weas addressed and sent to the young members and the other was addressed and issued to mother and sisters and the postal charges was paid @ Rs. 2.50 paise per letter but according to her opinion, the respondent had incurred expenses for the letters @ 7.50 paise per one letter as the letters were in multi- colour print. At para 20, she has stated that she had called for quotation from the publishers of such letters and the original have been placed. Except these oral statement, nothing has been proved to corroborate it.

49. if such statement of examination- in- chief of the petitioner is examined, it would reflect that she had not exhibited any document to prove the facts, however, predominantly it will show that the statements had stressed upon to draw a presumption on the basis of personal opinion. The calculation as has been opined would show that as per the petitioner, the number of voters should be multiplied by the cost of printing and postal charges of each inland letter, therefore, that expenditure should have been included. Though the reference has been made to the quotation about cost of printing but no documents have been placed and exhibited. At this stage, if we refer to the cross examination of the petitioner, at para 64 it is stated that the information of printing of inland letters have been collected on the basis of information collected by the Election Commission. Therefore, obviously the statement would be hearsay. She further stated that the seizure of 129596 inland letters is to her knowledge and information. Except the oral statement no corroborative evidence is on record.

50. The petitioner in her court statement at Para 65 stated that the complaint which was made to the Election Commission is narrated on the basis of information received from the members of the party as also of her own knowledge. At Para 71 of the cross examination, she stated that she did not come into contact with the publisher of the inland letter. it is admitted that though she knew the publisher but she had not called them in evidence to prove those facts, She admits that she had not filled any complaint against the publisher nor has lodged any report with the police At Para 74 it is stated that she admits the fact that the question of publishing and payment depends upon the inter- se relation and the publisher may also get the letters published without any cost also but the cost has to be evaluated as per the guidelines issued by the Election Commission. Therefore, no certainty has been attached to the actual proof of such statement and appears to be made on hear say.

51. The petitoner in her court statement at para 75 admits the fact that she got the information from the newspaper that 12156 inland letters were seized and had volunteered in statement that the Election Commission team also recorded the same. At para 76, he further stated that with respect to publication of 411518 inland letters with printing of inland letters no documentary evidence has been placed in this case and the expenses of Rs. 2, 57,590/- has been drawn on presumption of her own. she had volunteered that twice the inland letters had been sent to the voters and on that basis calculation was made. She further stated that she is not in know of the fact that whether or not the letters were sent to the actual voters of the Constituency No. 51 of the Stae Legislative Assembly.

52. Therefore, if the statement of the petitioner with respect to the inland letters are cosidered alotogether, it goes to point out that only by Ex. P-22 to 31 the letters have been placed and consequently the prayer is made to draw a presumption on the basis of number of voters. it being an election petition, the opinion of the petitioner as also the prayer to draw the presumption cannot be acceded as tha statement of the petitioner along- with pleadings are as vague as it could be. it only refers to making a complaint. Neither the publisher has been examined to substantiate the actual expenses nor any other evidence is placed on record to prove the fact that who got the inland letters published and at whose instances such publication was made and how much publication was made. By merely procuring few letters i. e. documents Ex. P-22 to 31, it cannot be substantiated the actual expenses incurred over the inland letters used during the election campaign.

53. Over this issue, further when we refer to the statement of mamta Rai (P. W. -2), at para 7 of the affidavit she stated that the respondent Brij Mohan Agrawal had sent the inland letters to every house and all the voters and it was sent through postal department. If we refer to the cross examination of this witness, at para 8, she stated that inland letters were sent through Sunder Nagar Post Office and further amended the statement by saying that it was given to one Vimla Nagarchi and in turn it was given to the petitioner. Vimla nagarchi was not examined in this case. As against this, the petitioner has not stated that the inland letters were given through Mamta Rai to her, thereby mamta Rai had contradicted the averments. She further at para 9 has stated that she had not made any written complaint but had made oral objection P.W. 3 Vinod Bharat had made statement with respect to the inland letters. At para 7 of the statement of this witness, it is stated that all the voters had received the inland letters which were sent by Brujmohan Agrawal. At para 14 of cross examination he stated that the inland letters were received by him in person. He further stated that the letters were received by one Smt. Phootan and this witness had received the same from her and in turn had handed orver to petitioner kiranmayee nayak Whereas the petitioner has not stated anything that the letters were handed over to her by Vinod Bharat. The pleading in this respect is also absent. Therefore, in the evidence of receipt of inland letters, the witness of petitioner itself had given contradictory statement to each other.

54. The witness chandrahas nayak (P. W. 4) at Para 9 of the affidavit filed under Order 18 Rule 4 of CPC has stated that he has made a complaint to the CEO, on 13-11-2013 and asked to add Rs. 8 lakhs as election expenses over head of the inland letter. He further stated at Para 10 that 174134 inland letters were sent through business post service from Bilaspur National Computer to the Postal Department and the election Commission has seized those letters. Therefore, the expenses of Rs. 8 lakhs have been proved. He further made a reference to a letter of National Computer

Bilaspur and stated that Rs. 3 lakhs business had already been given and further Rs. 5 lakhs business was expected from respondent. Therefore, since the same was being done as such the presumption would show that another 3,50,000 to 4,00,000 letters were kept ready to be sent. The said letter has not been exhibited though it is attached along- with Ex. P-2 the letter dated 07-11-2013. The statements would show that the averments of expenses were on a mathematical calculative presumption No. actual proof of the statements are on record. The Statement is silent with respect to fact who had given letters for distribution. on which date it was given whether it was prior to filing of nomination either of the petitioner or the respondent and who was getting it printed it was not the respondent alone, but there were also other contestants in the election fray including the petitioner. Therefore in absence of any direct evidence, the enfrance of the letter cannot be attributed to the respondent alone so as to calculate the expenses on presumption.

55. Further at this juncture, if we refer to the statement of P. W. 4 at Para 15 of cross examination, he has shown his inability to explain on what date. Ex. P. 18 was sent for Bilaspur He also stated that he never went to National Computer Bilaspur to enquire about the fact that who get the letters published. The document Ex. P 18 is only a complaint made by the petitioner and not by the witness Therefore, this also contradicts the statement of the petitioner on the factual issues.

56. Further on the issue when we refer to the statement of Pawan Kumar Lahre (P. W. 5.) who is senior Post Master, Main Post Officer, Raipur, it shows that he has made an averment that certain letters were seized in which the sender's name was shown as Brijmohan Agrawal and the stamp of Rs. 2.50/- was affixed. At para 4 he has stated that on 11-11-2013 the information was sent by official communication that on 10-11-2013, 23750 and on 11-11-2013, 20080 inland letters which contain the sender's name as Brijmohan Agrawal were seized. On having asked that whether such copies of seized inland letters were in the record, it was stated categonally that such inland letters were not in the records in this context, if we again fall back to the statement of the petitioner quo number of inland letters seized. it is stated that 125000 letters were seized. The letters have been proved by this witness which have been marked as Ex. P-22-31. A perusal of the letter would show that it bears the stamp of post- office, therefore the objection which was made at the time of evidence that it is not admissible is over-ruled and it having been proved in the official capacity bares the seal, the letters are admitted in evidence but not benefit flows out of it to the petitioner.

57. With respect to the letters, when the statement of P. W. 6 Mahendra Kumar Sharma, the Postmaster of Bilaspur Office is examined, he stated that the tickets attached in Ex. P-22 to 31, by franking the postal stamps were attached by Bilaspur Office. The witness at para 3 stated that the sender's name in this letters was shown to be Brij Mohan Agrawal but he did not bring the papers on record in respect of the same and clarified that the records were available at Mail Business Center, Railway Mail Service, Bilaspur, It is further stated that the records were not in his jurisdiction, therefore, he did not bring the records. In the cross examination of this witness, he stated that which were the documents required were not shown in the summons and further made statement that if such letters were sent by kiranmayee Naik, he cannot positively affirm the same. Therefore the statement of this witness with respect to the signature of letters is of no use to the petitioner.

58. On similar issue, the statement of Sanjay Agrawal (P. W. 7) who was the Additioanl District Magistrate and the Returning Officer at the relevant time is also relevant During examination when he was confronted with Ex. P-1 which is register for maintenance of day to day account, he stated that these documents were never produced before the Returning Officer. With respect to the CD at para 10, he has stated that certain letters which are part of the record were given by the Video Observer Team and as per the letter the CD Videography was enclosed with such seized inland letter. when the witness was confronted with this fact that certain marking was in the CD, it was objected and stated that the said CDs were not related to the videography and no seizure was made and the CDs were not further certified to be admissible under the evidence Act. A perusal of the said document would show that the CDs so placed do not bear any certificate which is required u/s 65-B(2) of the Evidence Act. The witness has also not admitted the contents thereof, therefore. in absence of such certificate u/s 65-B of the Evidence Act and on denial of the witness. The same cannot be accepted as an evidence in this case Further referring to the CD at Para 30, he stated that what was recorded in the CD only it can be explained by the Video Observation team. Therefore, this witness was not author of such CD.

59. In the entire statement with respect to the inland letters, no evidence has come on record to show that when such seizure of inland letters was made and what was the date of seizure. Whether it was during the election or prior to it only presumption could have been drawn. As per the witness. The returned candidate Brijmohan Agrawal has filed his nomination on 13-11-2013 and thereafore. the expenses could only be added if it was in curred on 13-11-2013 or thereafter On this issue when we refer to the statement of P. W. 9 Sangeet Singla who was expenditure observer at the relevant time. at para 8 he has stated that sending of the letters like nature was permissible. He has further stated that so far as it relates to Anulagnak 21, he dissented over the expenses. The petitioner witness though had referred to Anulagank 21 but it has not been placed on record the petitioner therefore has failed to even bring her own contention

whereby the Expenditure Observer alleged to have dissented Consequently, the non filing of such document and proving the same bebore the court or withholding the same will compel the Court to draw an adverse interence with respect to the same.

60. Dr. Ashish Singh Thakur (P. W. 10) who is Superintendent of Post office Raipur, has referred to a letter dated 07-11-2013 but stated that the said letter is not available in his record. it is stated that on 10-11-2013 and 11-11-2013 certain seizure was made and panchnama was prepared, neither the seizure nor the Panchnama is placed before the Court. Only the oral evidence has been made. The petitioner though had made avermants in the petition but has failed to take care of filing documents before the Court.

61. Likewise P. W. 11 Smt. Nidhi Chhibber who is Chief Election Officer though was examined on behalf of the petitoner but she had not brought any document. She further stated that she had not brought any document of Ex. P-1(C) as she was not aware of the subject. She had not narrated anything about such document.

62. Now coming to the statement of P. W. 12 Mahdev Kavre who was working at the relevant time as returning officer has stated that document Ex. P-1 (C) was deposited by Brij Mohan Agrawal, thereby the existence of the document is proved. This document though was deposited by the respondent before the Nodal Officer but the same is proved by the petitioner. The contents of this document dated 29-10-2013 show that YUVA PATRA Pamphlet has been shown of Rs. 5000/- and on 30-10-2013, the postal charges has been shown as Rs. 13,000/- of Mail Business Center. Bilaspur and pamphlets of 2500 from National Computer. The documents filed and proved by the petitoner have been explained by the respondent Brij Mohan Agrawal of para 74 and he stated that he has not printed any inland letters and distributed during election. White he was confronted with the letter Ex. P-22 the witness completely denied the document. The petitioner has thereby failed to prove by reliable evidence that the documents Ex P-22 to 31 were actually printed by the respondent for distribution. Neither acceptable evidence is on record nor any evidence has been adduced to show that the said letters were published by the respondent, thereafter was sent through postal department and during such transition it was seized in order to prove the fact the petitioner was required to call the documents and prove the same as otherwise the inference cannot be drawn only on the statement of petitoner that the respondent has published the inland letters for each voter and they were being sent through postal department.

(B) With respect to expenses over Toll Free Number

63. With respect to the toll free number 18004191427, the petitioner has not stated anything in her chief At para 77, she admits that she has not placed any document to show that the expenses of Rs. 7 lakhs was incurred by respondent for the toll free number. She also admits that expenses of Rs. 2 lakhs has been pleaded at para 8 but no document has been placed on record. Likewise she admitted the fact that though statement was made that for one call 35-40 paise was incurred on each voters but no document has been placed. Thereaftor, P. W. 3 Vinod Bharat though stated about the MMS and Voice Messages but pleading to this effect is completely absent Consequently, with respect to toll free number though the pleading is made but it is without proof and though certain statements were mad but they were without any pleading vice versa. Consequently no evidence is on record to evaluate that how much expenses was incurred on the toll free number by the respondent it is also not clear from the statement that when it was obtained whether prior to the filing of nomination or in between the filing of nomination and declaration of result and the dates would be crucial to decide the issue. Consequently with respect to toll free numbers as alleged to be used by respondent, no evidence of expenses is on record.

(C) EXPENSES OF LED T.V.

64. Now with regard to the expenses of LED TV, the petitioner in her affidavit at para 12 has stated that one day expenses for LED TV quotation was of Rs. 30,000/- per day However, no documents have been placed and exhibited for such quotation to read it in the evidence. In para 90 of the cross examination, the petitioner has stated that the averments made in para 11 about the LED Picture, vehicle with LED picture she has not enquired as to who was the owner of the same and no information was gathered from RTO department too. She further stated that she is not in know of any dealer of Tata vehicle with LED Picture and stated that when two vehicles were seized, she obtained the quotation and on the basis of quotation Rs. 60,000/- towards rent has been projected. Further at para 91 she stated that expenses shown by the respondent of Rs. 5600/- over the LED TV propaganda has been wrongly been shown.

65. In the statement of Brij Mohan Agrawal D W 1 at Paras 44-46 he has denied the seizure of LED vehicle. Now when we refer to para 44 of cross examination of Brijmohan Agrawal (the returned candidate) it is stated that two vehicles were seized, but about the seizure of LED vehicle has been denied. He further denied that he vehicles with LED TV were used in the election it is further stated that no vehicle was used during election without any permission. The document which is placed before the Court do not show the fact of seizure. The respondent though has stated the seizure of vehicle, the seizure of vehicle with LED picture has been denied. Therefore, when the petitioner was with specific case that the LED vehicles were seized, the expenses incurred could have been proved by placing necessary

quotation and the seizure documents. it could have been established by documentary evidence that the vehicles which were seized were with LED picture. Merely for the reason that the vehicle was seized , presumption cannot be drawn on the oral statement of petitioner that the vehicles were equipped with LED TV and were seized. The petitioner has, therefore, failed to place on record any acceptable evidence with respect to the expenses incurred by the respondent/returned candidate over the vehicle with LED.

(D) DISTRIBUTION OF BOOKS

66. The petitioner at para 30 has stated that certain books were distributed by the respondent which was in 48 pages having multi -colour printing and 50,000 copies were published. No book has been marked and placed in evidence or exhibited on record so as to accept the statement of the petitioner. At para 92 of the cross examination of the petitioner, she admits that the book titied as Chhattisgarh Ka Gaurav Raipur Ke Atma Samman Ke prateek was published. Though the name of publisher was shown but she has not enquired from the publisher that who had got if published. The number of books published is shown to be 205759 and it is stated that expenses of Rs. 25/- were incurred but neither any document nor any such book has been placed on record to show that what were the book nor any other evidence of publisher or any relevant witness has been produced to show that the books were existing At para 93, the respondent has given the explanation that 5000 books were published, therefore, in absence of any evidence as to how many books were published who published the books ; only the oral statement and infernee of the petitioner cannot be accepted to ascertain the figure coupled with the fact that the same was done in between a specific period of time of filling of nomination and declaration of result.

(E) CALLING OF T. V. ARTISTS AND DASHERA FESTIVAL FUNCTION

67. The petitioner has further deposed that respondent had invited various TV artists to campaign has election and the expenditure for the same was not disclosed by him it was further stated by the petitioner that the complaint dated 14-10-2013 Ex. P-3 was made by her. The evidence would show that the invitation card of the said function is marked as Ex. P-5 to P-11. The complaint dated 14-10-2013 Ex. p-3 contains the fact that on 13-10-2013 a function on the occasion of Dashera was organized by Sarvajanik Dashera Samit and invitation card Ex. p-6 shows the date, therefore. it the function was held on 13-10-2013 it was before the filing of nominatin and the expenditure incurred can only be considered in between filing of nomination and declaration of result. Apparently the same was before the filing of nomination, therefore the court is not required to go into such details of expenses incurred Further more, the avements made in this regard is completely on presumption and opinion. No evidence is placed on record that who paid the amount to the artists and when it was paid. The petitioner also participated in the said function. Consequently. the expenses cannot be stated to be incurred by the respondent alone.

(F) DISTRIBUTION OF BUTTONS, KADA etc.

68. With respect to the distribution of buttons, kada, metal chain, metal batch, wrist chain etc, the facts have been pleaded by the petitioner at para 10 of the petition. P. W. 1. the petitioner at Para 11 of the affidavit had stated that certain articles were received by the petitioner during her election campaign which included calendar. hand belt and were distributed by the respondent. Further she has stated that according to her presumption, the expenditure would have been around Rs. 30 lakhs. The statement before the Court at paras 20-25, she referred to a complaint made vide Ex P-11 that respondent has distributed hand belt, button calendar CD card etc., and according to her opinion. distribution of such goods comes within the ambit of corrupt practice as there was a complete prohibition for such distribution, She further stated that in order to distribute the goods, the respondent has incurred expenditure of Rs. 20 lakhs which should have been enquired and added to the expenses of the petitoner.

69. In cross examination of the witness, she deposed that the goods which were distributed are stated to be distributed on the basis of information received from the Election Commission, therefore, she herself has destroyed her evidence and proved the fact that it was an hearsay. She further stated at para 79 that for the goods i. e. button, metal chain, kada, metal badge, small button. Wrist bracelet, expenses were given by the election commission and further at para 81 she has stated that the goods which were given by the respondent bears the photograph of the respondent for which a complaint was made to the Election Commission and the complaint was made after completion of election on 02--01-2014. she further stated that though a complaint was made on 29-10-2013 before the Election Commission, but the complaint has not been placed on record and was sent by mobile to the Election Commission. Further in cross examination at paras 81 to 85 she admits the fact that the goods which were in Ex P-11A were of the election of 2013 have not been shown but since it bears the photographs of Narendra Modi, therefore, the presumption could have been drawn that they were used in 2013 election itself.

70. Referring to the expenditure, it is stated that according to her estimation, the expenses of Rs. 30 lakhs were incurred for distribution of such goods and according to the calculation and multiplication of the same with the number of voters, the expenses was projected in the statement of affidavit she stated that expenses would be upto Rs. 30 lakhs . Before the Court the petitioner had stated that the expenditure of Rs. 20 lakhs was incurred in distribution of goods. The statement would further show that the information about the distribution of goods were received from the party workers. Therefore, no direct evidence is placed on record that the goods were distributed by the respondent. The witnesses of the petitioner Smt. mamta Rai at para 8 of the affidavit stated that the goods were distributed to the voters at the time of election and she had collected the same and sent the complaint to the election commission whereas in the cross examination at para 9, it is stated that the goods were given by some BJP workers at his residence. Further the witness has stated that since she was out for the election campaign, as such, by which BJP worker was given at her residence, she is not able to name him. Therefore, this witness has contradicted her statement itself from her chief itself.

71. The witness P. W. 3 Vinod Bharat has stated that in the year 2013. different goods were distributed by the respondent and the information of it was received by him in person as also from other friends. incross examination at para 7 the witness has stated that the goods were given at his residence by some of the BJP worker but by whom it was given, he is not able to name as he was not available in the house. He further referred to the distribution of goods to his brother at his shop but the brother of witness has not given any evidence and it is also hearsay.

72. The witness P. W. 4 Chandrahas Naik at para 12 has also made a statement on an hearsay and his opinion that expenses should have been Rs. 30 lakhs for distribution of goods P. W. 7 the returning officer referring to Ex. P- 11-A about the goods has stated at para 11 that rubber band bracelets. key chains were available in his office and when the complaint was made about the distribution of goods by the petitioner on 08-11-2013 the same was enquired and after enquiry it was found that the complaint was vague. Therefore, the witness of the plaintiff itself has destroyed the evidence of distribution of goods by the respondent.

73. Taking into totality of the statement of witness it would show that the evidence of the petitioner is too vague and if it is read along with the statement of D. W. 1 it would show that he has completely disowned the fact fo distribution of goods. Therefore, only on the basis of presumption and assumption, it cannot be stated that the petitioner was able to prove the fact that the respondent has distributed the goods.

(G) ON DUMMY VOTING MACHINES

74. Now referring to dummy votting machine the petitioner has contended at para 13 of the petition that dummy voting machines were distributed. The pleading would also show that on presumption, the calculation was made. Nothing has been stated in the affidavit However, in the statement before the Court at para 32, she referred to complaint of 02-01-2014 and stated that in 228 election booths along with table chair Pandals and demo machine, an expenditure of Rs. 1,52,470/- was incurred. Neither any document has been placed and proved nor any direct evidence has been adduced it is also based on hearsay. The complaint was made vide Ex.P-14 but simply because the complant was made, it cannot replace the fact of proof. At para 69 of the cross examination. She stated that the facts stated were on the basis of information and at para 93 of the cross examination, reference of presumptive calculation has been made that according to the number of booths having been calculated with the number of dummy voting machines, certain expenses should have been added Neither any evidence is existing nor any document is placed to come to the conclusion of the expenses incurred with respect to dummy voting machine.

75. Further it the statement of P. W. 4 Chandrahas Naik is examined it would show that at para 15 of the affidavit this witness has referred to complaint made to the Election Commission and stated that a request was made to Election Commission to add Rs. 1,52,470/- but in the evidence of P. W. 7, P. W. 9 & P. W. 11, no question was ever put that certain complaint was made, therefore merely because the complaint was made, the same cannot be accepted as an expenditure. No evidence is existing in this regard.

76. With respect to the existence of certain CDs i. e., video which are placed in election trial, it would be necessary to discuss the law governing the field. The Evidence Act has been amended by the I. T. Act to introduce the admissibility of the electronic records. The concept of electronic evidence has been incorporated to provide the court with a frame work to incorporate and introduce these new innovations in scientific technology. Under Section 3 of the Evidence Act, the definition of term "evidence" has been amended to mean and include ;

"(a) all statements which the court permits or requires to be made before it by a witness ; in relation to matters of fact under inquiry, such statements are called oral evidence ;

(b) all documents including electronic records produced for the inspection of the court ;

such documents are called documentary evidence."

77. In accordance with the amended definition of "evidence" documentary evidence has been amended to include electronic records. The term "electronic evidence" has been given the same meaning as assigned in the IT Act which means date record or date generated image or sound stored, received or sent in an electronic form or micro file or computer generated micro fiche

78. According to the new provisions introduced inot the Evidence Act, Section 65-A provides that the contents of an electronic record may be proved in accordance with the provisions of S. 65-B of the Evidence Act which provides that notwithstanding anything contained in the Evidence Act, any information contained in an electronic record which is printed on a paper, stored, recorded or copied in optical or magnetic media produced by a computer (computer output) shall be deemed to be a document, provided the conditions specified in S 65-B (2) are statisfied in relation to the information and computer in question. Such a document is admissible in any proceedings, without further proof or production of the original, as evidence of any contents of the original or of any fact stated therein of which direct evidence would be admissible.

79. Before a computer output is admissible in evidence, the following conditions must be fulfilled. as set out in Section 65-B (2) :

"(a) the computer output containing the information was produced by the computer during the period over which the computer was used regulairly to store or process information for the purpose of any activities regularly carried on over that period by the person having lawful control over the use of the computer ;

(b) during the said period, information of the kind contained in the electronic record or of the kind from which the information so contained is derived was regularly fed into the computer in the ordinary course of the said activities ;

(c) through the material part of the said period the computer was operating properly or, if not then in respect of any period in which it was not operating properly or was out of operation during that part of the period, was not such as to affect the electronic record or the accuracy of its contents ; and

(d) the information contained in the electronic record reproduced or is derived from such information fed into the computer in the ordinary course of the said activities."

80. The laws on section 65-B of the Evidence Act came up for interpretation before Their Lordships in case of (2014) 10 SCC 473-Anvar P. V. Vs. P. K. Basheer wherein Hon'ble the Supreme Court held thus in paragraphs 14, 15 & 16.

"14 Any documentary evidence by way of an electronic record under the Evidence Act, in view of Sections 59 and 65-A can be proved only in accordance with the procedure prescribed under Section 65-B Section 65-B deals with the admissibility of the electronic record. The purpose of these provisions is to sanctify secondary evidence in electronic form generated by a computer. it may be noted that the section starts with a non- obstante clause. Thus notwithstanding anything contained in the Evidence Act, any information contained in an electronic record which is printed on a paper, stored recorded or copied in optical or magnetic media produced by a computer shall be deemed to be a document only if the conditions mentioned under sub section (2) are statisfied, without futher proof or production of the original . The very admissibility of such a document i. e. electronic record which is called as computer output depends on the satisfaction of the four conditions under Section 65-B (2) of the Evidence Act.

(i) The electronic record containing the information should have been produced by the computer during the period over which the same was regularly used to store or process information for the purpose of any activity regularly carried on over that period by the person having lawful control over the use of that computer.

(ii) The information of the kind contained in electronic record or of the kind from which the information is derived was regularly fed into the computer in the ordinary course of the said activity.

(iii) During the material part of the said period , the computer was operating properly and that even if it was not operating properly for some time, the break or breaks had not affected either the record or the accuracy of its contents ; and

(iv) the information contained in the record should be a reproduction or derivation from the information fed into the computer in the ordinary course of the said activity.

15. Under section 65-B (4) of the Evidence Act if it is desired to give a statement in any proceedings pertaining to an electronic record, it is permissible provided the following conditions are statisfied.

(a) There must be a certificate which identifies the electronic record containing the statement

;

(b) The certificate must describe the manner in which the electronic record was produced.

(c) The certificate must furnish the particulars of the device involved in the production of that record.

(d) The certificate must deal with the applicable conditions mentioned under Section 65-B (2) of the Evidence Act; and

(e) The certificate must be signed by a person occupying a responsible official position in relation to the operation of the relevant device."

16. It is further clarified that the person need only to state in the certificate that the same is to the best of his knowledge and belief. Most importantly, such a certificate must accompany the electronic record like computer printout compact disc (CD), video compact disc (VCD), pen drive, etc., pertaining to which a statement is sought to be given in evidence when the same is produced in evidence. All these safeguards are taken to ensure the source and authenticity. which are the two hallmakes pertaining in electronic record sought to be used as evidence. Electronic records being more susceptible to tampering, alteration transposition, excision, etc., without such safeguards, the whole trial based on proof of electronic records can lead to travesty of justice"

81. P. W. 7 has stated that C. D. No. 91 was not issued by him,. it is stated that the Video Observer Team can only demonstrate the same Referring to C. D. No. 91, this witness has stated that it only engrafts a nomenclature of a joint rally of 31-10-2013. The CD was admitted in evidence with an objection. Apparently the CD. would show that it suffers with non-compliance of section 65(B) (2) of the Evidence Act. The witness has further stated that he has not seen the contents of CD. further if the CDs are examined in the analogy of the aforesaid law laid down it would show that no kind of certificate as required has been placed and produced by petitioner. Further to corroborate the fact if the statement of P. W. 7 is examined, it would reveal that at para 13, P. W. 7 has completely denied the existence of CD and it is stated that the CD No. 91 was not issued by him and the Video Observer can only demonstrate them.

82. With respect to the other C. Ds, which have been referred by the petitioner at para 40 were said to be supplied to her by District Election Commission. The said C. Ds., were not exhibited during evidence A perusal of it shows that it is contained in a cover and over it certain written marking is made. The said CDs are also not accompanied with any certificate so as to make it admissible. There is nothing on record to show by the statement of witnesses on behalf of election commission that the same CDs which are kept in a plastic wrapper was issued to the petitioner in the facts of the case, since the CDs so placed do not comply the requirement of section 65 (B) (2) of (The Indian) Evidence Act, 1872, the same cannot be read in evidence for any purpose being inadmissible in evidence.

83. Now when we come to the evidence adduced by respondent, it shows that the respondent in order to prove the expenses has produced document Ex D-2. The document Ex. D-2 touches upon the explanation given by the respondent as against the notices given to the respondent during election campaign. The documents purports that when the respondent was served with notices dated 10-11-2013, 16-11-2013 and 20-11-2013 the respondent came out with an explanation on the expenses. The same fact is corroborated by P. W. 7 Sanjay Agrawal who has proved the document Ex. D-2 and the signature therein that it was of Siddharth kumar Paradesi, the District Election Officer and of Mahadev Kavre from 'A to A' to 'B to B'. A perusal of the Document D- 2 demonstrates that certain notices which were given to the respondent in respect of expenditure incurred during campaign which was replied and on the basis of said reply, two of the members of District Expenditure Committee accepted the expenditure shown by respondent to be correct

and the copy was sent to the respondent. Therefore, the contention of the petitioner that notices were given about over expenditure which is fortified with Anulagnak 11 would be of no help to the petitoner. Even otherwise the Anulagnak-11 filed with the petition has not been accepted in evidence.

84. On the contrary, existence of Ex. D-2 having been proved and no objection was taken, therefore, as per the law laid down in (2007) 13 SCC 476 (Oriental Insurance Vs.Premlata Shukla), the document will be deemed to be admitted in evidence which necessarily proves that Election Commission was also satisfied with explanation over the expenditure for which the notices were given. So under the circumstances no inference could be drawn that during the election campaign the service of notices for over expenditure was given to the respondent as such exceeding the limits of expenses have been proved .

85. In the light of the aforesaid discussion made if the pleadings and evidence in this case are examined it will lead to an irresistible conclusion that the petitioner has failed to prove that the expenditure was made over and above the prescribed limit. The pleading of the petitioner would show that she has expressed her opinion on presumption. The facts have also been narrated on the basis of presumption. The pleadings of the actual facts as well as the evidence is also missing. It is settled law that in the matter of election jurisprudence, the success of a candidate who has won at an election should not be lightly interfered with and any petition seeking such interference must strictly conform to the requirements of law. The setting aside of election involves serious consequences not only for the returned candidate and the constituency but also for the public at large inasmuch as re-election involves an enormous load on the public funds and administration. The charge of corrupt practice is quasi criminal in character. Therefore a trial of an election petition though within the realm of civil law is akin to trial on a criminal charge. The allegations relating to commission of a corrupt practice should be sufficiently clear and stated precisely so as to afford the person charged with full opportunity of meeting the same . Secondly, the charges when put to issue should be proved by clear, cogent and credible evidence. To prove charge of corrupt practice is merely preponderance of probabilities would not be enough and the charge will have to be proved to the hilt, the standard of proof being the same as in criminal trial.

86. Further the averments and the evidence which led are too vague and merely an opinion has been expressed by the petitioner. No actual facts have been placed before this Court. Therefore, on scrutiny of the entire facts i. e., the pleading and evidence it would be in the realm of conjecture to uphold the contecture of the petitioner that the expenditure were incurred over and above the limit as the witness of petitioner have themselves admitted that when the notice for over expenditure were given they have been properly explained.

87. A prausal of the petition would further show that it was filed on 17-01-2014 by Advocate Statish Chandra Verma on behalf of petitioner Smt. kiranmayee Naik. The security deposit was further paid by Advocate Statish Chandra Verma on 16.-01-2013. The same is filed as Annexure P-12. Therefore, it shows that the petition has been filed not by the petitioner but it was by her advocate. The Supreme Court in case of G. V. Sree Rama Reddy Vs. Returning officer (2009) 8 SCC 736 has held that while interpreting the special statute, the Court has to consider the intention of the legislature. it was held that in spite of existence of adeqrute provision in the CPC relating to institution of a suit, the Representation of Pepole act, 1951 prescribes how the election petitions are to be presented and the Act also mandates the material to be accompanied with the election petition. it has also been held that the election petition has to be presented by the petitioner himself/herself. Section 81 of the R. P. Act mandates the same which relates to Presentation of petitions.

88. For the sake of brevity, para 19 of (2009) 8 SCC 736-G. V. Sreerama Reddy (supra) is repoduced herein below :

> 19. One can discern the reason why the petition is required to be presented by the petitioner personally. An election petition is a serious matter with a variety of consequences. Since such a petition may lead to the vitiation of a democratic process, any procedure provided by an election statute must be read strictly. Therefore the legislature has provided that the petition must be presented “by” the petitioner himself so that at the time of presentation the High Court may make preliminary verification which ensures that the petition is neither frivolous nor vexatious.

89. Therefore, it being the statutory mandate no deviation can be craved out in case of filing of election petition and there cannot be estopel against law. Hence the petition is also liable to be dismissed on this ground also as the finding in respect of maintainability of the election has been held against the petitioner by a finding of issues nos. 1 to 3. The issue framed as 4 & 5 are no longer required to be adjudicated separately as the election petition in held to be dismissed.

90. In view of the above conclusion, this Court is of the view that the petitioner has failed to prove that corrupt practice was committed by the returned candidate by incurring expenses more than the prescribed limit. As an upshot of discussions, the election petition is liable to be dismissed and is hereby dismissed. No order as to costs.

Sd/-

GOUTAM BHADURI,
Judge.

By order,

Sd/-
(KEDAR NATH BHAR)
Principal Secretary,
Election Commission of India.